(27,310)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 555.

SOUTHERN IOWA ELECTRIC COMPANY, APPELLANT,

vs.

THE CITY OF CHARITON, IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

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a Pleas and proceedings before the Honorable Martin J. Wade, Judge of the District Court of the United States for the Southern District of Iowa, in a certain cause lately pending in the Southern Division of said Court at Creston, Iowa, being numbered 4010, Equity, wherein Southern Iowa Electric Company is Complainant and The Town of Chariton, Iowa, et al. are defendants.

Appearances:

Tinley, Mitchell, Pryor & Ross, Council Bluffs, Iowa, Attorneys for Complainant.
J. W. Kridelbaugh, Chariton, Ia., Attorney for Defendants.

Wm. C. McArthur, Clerk, P. O. Des Moines, Iowa.

1 In the District Court of the United States, Southern District of Iowa, Southern Division.

In Equity.

4010, Eq.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor and J. M. Kneeland, E. C. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Citation on Appeal.

Filed Sept. 15, 1919. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

UNITED STATES OF AMERICA, ss:

To the City of Chariton, Iowa; H. G. Larimer, Mayor, and J. M. Kneeland, E. C. P. Connell, R. J. Yengel, W. F. Kull, and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, and to Joseph W. Kridelbaugh, Attorney of Record for Above Named Defendants:

You and each of you are hereby cited and admonished to be and appear *to* the Supreme Court of the United States to be held in the City of Washington in the District of Columbia on the 3rd day of October, A. D. 1919, pursuant to an order allowing an appeal,

filed and entered in the Clerk's office of the District Court of the United States for the Southern District of Iowa, from a final decree signed, filed and entered on the 25th day of June, 1919, in that said suit being in equity number 4010 wherein the Southern Iowa Electric Company is plaintiff and you are defendants and appellees, to

2 show cause, if any there be, why the decree rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable Martin J. Wade, United States District Judge, for the Southern District of Iowa, this 3d day of September, 1919, and of the Independence of the United States, 144th.

MARTIN J. WADE,
United States District Judge for the Southern District of Iowa.

3 STATE OF IOWA,
Lucas County, ss:

I, C. C. Lyman, being first duly sworn upon oath say that I am the duly elected, qualified and acting sheriff of Lucas County, Iowa; that the within and attached Citation on Appeal came into my hands on the 11 day of September 1919 and I duly served the same by offering to read the same to each of the defendants hereinafter named and each waiving the reading, and delivering to each a true copy thereof, as follows, towit: The City of Chariton, Iowa, by service upon W. M. Householder, city Clerk of said City; H. G. Larimer, named as Mayor, also Geo. Routt, Mayor succeeding H. G. Larimer, also J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, named as members of the City Council of the City of Chariton and upon Frank Dunshee, Fred Yengel, Alf. Simmons, O. E. Lamb having removed his residence from the State of Iowa and his residence unknown, 66 members of the City Council of the city of Chariton, Iowa, succeeding C. P. Connell, R. J. Yengel, J. M. Kneeland as such members; that the service of such Citation on Appeal was so made by me upon each of the above named defendants on the 11 and 13 day- of September *day of September* 1919; that Joseph W. Kridlebaugh, Counsel for defendants and City Attorney for the city of Chariton is absent from the State.

C. C. LYMAN.

Subscribed in my presence and sworn to before me by the said C. C. Lyman this 13th day of September 1919.

[Seal of the District Court, Lucas Co., Iowa.]

GEO. A. VERNER,
Clerk of the Dist. Court.

4 Be it remembered that on the 5th day of November 1918 there was filed in cause No. 4010, Equity Southern Division, Southern Iowa Electric Company vs. The Town of Chariton, Iowa,

et al. a Bill of Complaint which is in words and figures as follows to-wit:

5 In the District Court of the United States, Southern District, Southern Division.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yenger and W. F. Kull, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Bill of Complaint.

Filed November 5, 1918. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

To the Honorable Judge of the District Court of the United States for the Southern District of Iowa:

The plaintiff, Southern Iowa Electric Company, brings this its Bill of Complaint against the City of Chariton and H. G. Larimer as Mayor and J. M. Kneeland, J. P. Connell, R. J. Yengel and W. F. Kull, as members of the City Council of the City of Chariton, and complains.

I.

The plaintiff, Southern Iowa Electric Company, is a corporation organized and existing under the laws of the State of Delaware and is a resident and citizen of the State of Delaware.

II.

The defendant, City of Chariton, is a municipal corporation of the State of Iowa, and created as such by the Legislature of the State of Iowa, and pursuant to an act made thereby and under authority of the Constitution of the State of Iowa. The defendant, H. G. Larimer is the duly elected, qualified and acting mayor of said city and the defendants, J. M. Kneeland, J. P. Connell, R. J. Yengel and W. F. Kull are the duly elected, qualified and acting members of the City Council of said city of Chariton and together constitute the City Council of said City; that each of said defendants is a resident and citizen of the State of Iowa.

6 III.

The amount involved in this controversy exceeds the sum of Three Thousand ($3,000.00) Dollars exclusive of interests and costs and the controversy arises under and involves a construction and application of the provisions of the Constitution of the United States, to-wit,

those provisions of the Constitution of the United States prohibiting the taking of the plaintiff's property for public use without just compensation, to-wit, the fifth and fourteenth amendments to the Constitution, those prohibiting the taking of property of plaintiff without due process of law, to-wit, the fifth and fourteenth amendments to the constitution, and those guaranteeing to plaintiff equal protection of the law, to-wit, the fourteenth amendment to the Constitution.

IV.

The plaintiff further complaining of the defendants and each of them alleges that it is a corporation organized and existing as aforesaid, owning and operating the business of supplying in the City of Chariton, Iowa, electric current for the lighting of the streets and public places and the furnishing of power for public uses, also furnishing electric current for private and commercial uses, for lighting and power purposes, to the citizens of Chariton, Iowa, and the public generally; that the plaintiff in carrying on said business owns, operates and maintains a well equipped and modern plant for generating electrical energy in the City of Chariton and transmission lines in and along the streets, avenues and public places of said city, comprising poles, wires, transformers and other fixtures and which said transmission lines cover said city for the convenient and economical connection with lighting and power fixtures and equipment of all users within the limits of said city.

That the plaintiff owns and operates its said generating plant and that the same is of sufficient capacity to furnish, not only the electrical energy required for lighting and power purposes within said city of Chariton, but sufficient to supply the demands for other cities for public purposes and for commercial and private uses; that

7 the plaintiff is the owner of a transmission line for the carrying of electrical energy, to and into the cities of Osceola, Lucas, Woodburn, Lacona, Russell and Murray, together with transmission lines along the streets, avenues and public places of all of said cities so constructed as to furnish electrical energy for the public uses of said cities for lighting and power purposes and for all of the inhabitants of said cities; that all of said cities are in close proximity to each other and so situated that the furnishing of electrical energy for their uses, generated at a common plant provides a greater economy than could be provided by a separate plant for each city; that plaintiff in the construction, maintenance and operation of said transmission lines and in the furnishing of electric current for lighting and power purposes is carrying on its business in each of said cities pursuant to authority granted unto it in the manner provided by law and likewise is maintaining and operating its lines of transmission between said cities pursuant to authority granted to it under the laws of the State of Iowa.

V.

The defendant, City of Chariton, by ordinance regularly passed by its City Council and approved by its Mayor upon the consent of the electors of said city being first had in the manner provided by law granted unto one Edwin B. Perrigo and his assigns power and authority to construct, maintain and operate transmission lines in and along the streets, avenues and public places of said city and to construct, maintain and operate its line of poles with wires and other conductors, fixtures and appliances necessary and proper for the transmission of electric current along and over the streets, avenues and public places of said city and furnishing electric current for power and lighting purposes to said city and all of the inhabitants thereof; that said ordinance was so adopted by said city on or about the 21st day of September 1914, and thereafter, to-wit, within thirty (30) days was by the said Edwin B. Perrigo regularly assigned to this plaintiff; that he, the said Edwin B. Perrigo, assigned and transferred to this plaintiff all of the rights vested in him under
8 said ordinance. Hereto attached is a copy of said ordinance, marked "Exhibit A" and made a part of this petition; that at the time of the passage of said ordinance as hereinbefore alleged and the assignment thereof to this plaintiff, the plaintiff paid to the defendant, City of Chariton, the sum of Sixty-Five Thousand Dollars ($65,000.00) as the purchase price of its electric plant comprising its generating plant and transmission lines, fixtures and equipment; that immediately thereafter the plaintiff entered into the possession of said plant and commenced operation thereof, carrying on the business of generating electrical energy and furnishing the same for lighting and power purposes; that in accordance with the terms of said contract with the city of Chariton the plaintiff immediately commenced the construction of a new generating system and the rebuilding of the distribution system at a total cost of Ninety-five Thousand Nine Hundred Eighty-eight and 15/100 ($95,988.15) Dollars, and has since carried on the business of generating electric current and furnishing the same for lighting and power purposes in the City of Chariton as well as the other cities hereinbefore named.

VI.

That at the time of the adoption of said ordinance by the City of Chariton as hereinbefore alleged the said City of Chariton was vested with the power by delegation thereof in the manner provided by law to regulate and fix the rates to be charged to all consumers of electric energy for light and power purposes within the corporate limits of the city furnished by any one engaged in the operation of any such business; that such power so vested in the City of Chariton was a continuing power imposing the duty upon said city to fix and regulate the rents and rates to be charged by the furnisher of electrical energy and to be so fixed at such an amount and rate as should be just, giving to the furnisher a sufficient return to meet all expense

9 and a reasonable profit compensating as interest upon invested capital represented by the value of the equipment necessarily used and useful in the carrying on of said business; that the said City of Chariton in the exercise of said power and conforming to the duty imposed upon it by the Laws of the State of Iowa fixed the rates and rents to be charged by the furnisher of electrical current to all users within the city of Chariton including the same in said ordinance as Section 3, which is as follows:

Section 3. The grantee shall sell current at rates not to exceed for monthly consumption those named in the following schedules:

Lighting Rates.

1 to 50 K. W. H., 12 cents per K. W. H.
51 to 150 K. W. H., 11 cents per K. W. H.
151 to 300 K. W. H., 9 cents per K. W. H.
301 K. W. H., and over, 8 cents per K. W. H.

Power Rates.

Up to 100 K. W. H., 9 cents per K. W. H.
101 K. W. H., and up to 300 K. W. H., 8 cents per K. W. H.
301 K. W. H., and up to 500 K. W. H., 7 cents per K. W. H.
501 K. W. H., and up to 800 K. W. H., 6 cents per K. W. H.
801 K. W. H., and up to 1000 K. W. H., 5 cents per K. W. H.
Over 1000 K. W. H., Special contract.
Power rates to apply on motors above two horsepower.
Meters shall be read monthly and charges made therefor; and a minimum charge of seventy-five cents per month shall be made for each meter connected where readings at the prevailing rates do not equal said sum.
No meter rent shall be charged.

Street Lighting Rates.

Overhead suspended hooded incandescent street lamps:
For 60 candle power lamps or their equivalent, each per annum, $15.00.
For 80 candle power lamps or their equivalent, each per annum, $18.00.
Lamps to be lighted from dusk to dawn each night.
Payment for same to be made in twelve equal monthly installments.
The grantee shall at all times furnish and maintain said lamps.
For five lamp cluster posts, as now installed, each having one top lamp or 80 candle power, to be lighted from dusk to dawn each night, and four bottom lamps, each of approximately 45 candle power, to be lighted from dusk to eleven o'clock P. M., each night or the equivalent of the above in candle power, each post per annum $36.00.

Payment for same to be made in twelve equal monthly installments.

The grantee shall furnish lamp and globe renewals for said cluster posts.

Pumping Rates.

Per kilowatt hour on meter at pumping station, 4 cents. This rate to include operating care of pump motor or motors and pumps. The city to pay for supplies and repairs.

10 That at the time of the adoption of said ordinance and the fixing of the rates to be charged by the furnisher of electric current users thereof within the city of Chariton, acting under the authority granted by said ordinance, the said City of Chariton found and determined the rates to be charged were such rates as taking into consideration the value of the equipment necessary for the carrying on of said business reconstructed in the manner required by the contract with said city and taking into consideration also the costs of essential material and labor required for the prosecution of said business and the amount of business then existing and obtainable would produce a revenue sufficient to pay the costs of operation of the plant and the furnishing of the service and a reasonable return as interest compensation upon capital invested, representing the cost and value of the property necessary for the carrying on of said business; that said city council determined said rates as being only sufficient to produce such a revenue and that in truth and in fact the rates so established were correct and could not produce a profit in excess of the cost of operation including compensation for depreciation of property and including also a reasonable interest upon necessary capital invested in the property essential for the furnishing of the service required; that the plaintiff in carrying on its business acquired under said rates only a sufficient income to compensate it for the cost of operation of business, including expense of labor and material essential to the carrying on of the business and compensation for depreciation of its property by use and a reasonable profit to compensate as interest upon invested capital essential for the acquisition of the essential equipment for rendering the service required; that said city council likewise took into consideration the fact that the equipment of the generating plant was larger than required for furnishing service to users within the city of Chariton and was sufficiently large to furnish service to the cities hereinbefore named and designed for such purpose and that in the furnishing of such service to such other cities rates would be charged based upon the same considerations; that in truth and in fact the rates
11 established by said ordinance were sufficient to furnish the returns hereinbefore referred to based upon such considerations.

VII.

Plaintiff further states that its capital invested in its said plant and transmission lines and its equipment all of which is necessary and used for the generating of electric current, and all of which is required for the convenient, suitable and economical supplying of electric current, aggregates the sum of Three Hundred Thirty Thousand Two Hundred Ninety-Eight and 66/100 ($330,298.66); that such values comprises its plant as hereinbefore referred to and its entire transmission line and all of the properties used by it for the furnishing of light and power in all of the cities hereinbefore referred to; that such valuation does not include properties that have become obsolete or that are not used or that are not useful and necessary in the carrying on of said business; that such values are based upon the reasonable value of the property and reproductive cost thereof, eliminating franchise value, going concern value and all matters aside from actual cost of equipment based upon normal prices of pre-war period.

That at the time of the adoption of said ordinance and the fixing of the rates hereinbefore referred to the rates established by ordinance for the light service in the city of Osceola permitted a charge of 20¢ per Kilowatt with a discount of 20% to all consumers using more than 25 Kilowatts per calendar month, and a discount of 33-1/3% for all using more than 25 Kilowatt- per calendar month. and a discount of 50% for all using in excess of 50 Kilowatts per calendar month; that such rates continued to be in force in the City of Osceola, Iowa, until on or about the 27th day of June, 1916, when the same were amended to substantially the same rates provided by Section 3 above quoted; that since the adoption of the ordinance above referred to fixing the rates as set forth in Section 3
12 above quoted in the City of Chariton, the plaintiff in carrying on its business through all other towns hereinbefore named excepting the Cities of Chariton and Osceola, charged and received for its service rates equal to and in excess of the rates established by said Section 3 above quoted; that the revenue derived by plaintiff from all sources under said rates prior to the extraordinary conditions hereinafter referred to were only sufficient to meet the actual expense of rendering the service including cost of labor and material, depreciation and other necessary expense and a reasonable return upon necessary capital invested in strictly essential equipment.

VIII.

Plaintiff further shows the court that since the existence of a state of war, to wit, since April, 1917, the cost of maintaining and operating the business of plaintiff and rendering the service required of the plaintiff that its expense has been greatly increased; that the cost of labor and material required for the operation of said business has increased from fifty to two hundred per cent; that such increase is abnormal and due to the extraordinary situations of the

world and the demand growing out of the necessities of war for man power and material; that the necessities of war have required the government to exact the service of men, withdrawing from the fields of labor several millions of men, thereby increasing the necessary wage scale; that the demands of the government for materials of all kinds for its uses in a foreign country necessary in the prosecution of the war and for uses of other nations allied with the government has greatly reduced the supply for the home market and resulted in a great and extraordinary enhancement of costs; that such condition is extraordinary and was not within the contemplation of the parties, to wit, this plaintiff and the defendant- at the time the defendants established the rates hereinbefore referred to and at the time the plaintiff entered upon the operation of the business
13 hereinbefore referred to; that such situation arises through causes beyond the control of this government or any agency thereof or this plaintiff, and arose through acts of lawlessness and violence of such a nature as to have been beyond *his* conception at the time of the adoption of the ordinance hereinbefore referred to; that the conditions extraordinary in character as hereinbefore alleged necessarily inhere in a state of war of world wide magnitude; that such conditions have imposed increased burdens upon all business requiring all departments of government to exact larger sums in taxes and thereby greatly increasing the business expense of this plaintiff; that because of these extraordinary conditions the returns of plaintiff from the operation of its business have been insufficient to meet its actual expense; that its actual expense for the year 1917 amounted to the total sum of Sixty-nine Thousand Seven Hundred Sixty-Three and 4/100 ($69,763.04) Dollars and which sum includes only the items of expense of operation including labor, materials and management and the expense of taxes and of depreciation of property and interest on bonds and notes representing borrowed money, which said interest charge aggregated the sum of Eighteen Thousand Four Hundred Sixty-Five ($18,465.00) Dollars; that the income of plaintiff from all sources during said year 1917 was Two Thousand Forty-Two and 37/100 ($2,042.37) Dollars, less than sufficient to pay its said expense; that for the first six months of 1918 including only the same items of expense, the loss of plaintiff was Three Thousand Seven Hundred Forty-Five and 47/100 ($3,745.47) Dollars; that such expenses have increased during the latter part of this year and the total loss of plaintiff for the year 1918 will approximate the sum of Fifteen Thousand Dollars; that such losses do not include the loss of plaintiff based upon a reasonable interest returned upon capital invested aside from capital borrowed, and does not include a reasonable return upon the value of the property as a going concern and the capital invested in the creation of business.

14

IX.

The plaintiff further shows the court that repeatedly since the arising of the extraordinary conditions hereinbefore alleged it has

fully and fairly presented with exactness and precision the question of the inadequacy of the rates as set forth in Section 3 above referred to to the *plaintiff*, and has urged the defendants to exercise the power granted unto it by the Laws of the State of Iowa, to regulate the rates to be charged by it and to establish such a rate as would meet the necessary expense in supplying the users of electric current in the City of Chariton and give to plaintiff a sufficient revenue to meet such expense, including interest upon borrowed capital, that the plaintiff likewise has continually presented the same showing, accompanied by a similar request, to the City of Osceola, and is now charging and receiving from the other cities hereinbefore alleged such a rate as, if applied likewise in the cities of Osceola and Chariton, would give to plaintiff a sufficient return to avoid the losses hereinbefore referred to; that notwithstanding plaintiff's frequent requests the defendants have failed and refused to regulate said rates and to establish rates that will compensate as hereinbefore alleged; that the said defendants claim a continuing contract fixing maximum rates to be charged.

X.

Plaintiff further alleges that in the month of July, 1918, the owners and operators of properties similar to those operated by this plaintiff, to wit, the owners and operators of public utilities of the State of Iowa, assembled with the representatives of municipalities in the State of Iowa with a view of meeting the extraordinary situations arising out of the war and for the purpose of avoiding losses that might occur and injuries to the owners of properties of such
15 character and with a view of avoiding the threatened calamity of bankruptcy of such institutions throughout the state, appointed five men, disinterested and capable, as a Board of Conciliation, authorizing said board to investigate and pass upon the adequacy and inadequacy of existing rates throughout the State of Iowa; that such Board was formed as a war measure with the view of meeting a duty devolving upon the citizens of Iowa to prevent ruin with its attendant effect upon the spirit of the people; that plaintiff, for the purpose of having determined the justness of its claim, requested the defendants to submit the matter of rates to such a board for arbitration by agreement; that upon the refusal of defendants the plaintiff filed an application with said Board of Conciliation requesting said Board to examine into the question of rates and the necessary amount thereof required to compensate plaintiff for the service rendered and a copy of said application was mailed to the defendants and the defendants notified to appear before said Board of Conciliation, but that defendants declined to appear; that thereafter the plaintiff presented its showing to said Board of Conciliation and said Board of Conciliation, after examining into such question and determining the value of the properties of plaintiff and cost of service, determined and presented a schedule of rates, found to be sufficient and only sufficient to meet the expense of rendering the service here-

inbefore referred to. Hereto attached is a copy of the finding of the Board of Conciliation, marked Exhibit C, and made a part hereof.

XI.

Plaintiff further shows the court that it is not earning sufficient money to pay the cost of operation and interest on its borrowed capital and alleges the fact to be that its said borrowed capital
16 is a lien upon all of its properties and secured by mortgage; that upon default said mortgage provides that the indebtedness secured thereby shall become due and that the mortgage is subject to foreclosure and that a receiver for the property should be appointed; that such expense of interest can only be met by the borrowing of additional capital, thereby increasing capital invested and under the laws of the State of Iowa plaintiff could not exact rates sufficient to furnish an earning power to pay interest upon such invested capital; that under the laws of Iowa the factor of interest allowed in the determination of proper rates can only be upon necessary capital invested in the equipment, to wit, the value of the equipment as a completed property and necessary for the furnishing of the service; that because of this situation additional capital cannot be obtained and default in payment of interest will result and that the same will be followed by great loss and irreparable injury.

XII.

Plaintiff further alleges that under the laws of the State of Iowa the city of Chariton is vested with the power to fix and regulate rates and charged with the duty of fixing such rates for service of the character hereinbefore alleged as shall compensate only as hereinbefore alleged; that such power and duty is a continuing power and a continuing duty and recognizes that with changing conditions rates should likewise be changed; that Section 3 of the ordinance above referred to by reason of the extraordinary conditions hereinbefore alleged has become and is null and void and should be by the court held to be null and void for the reason that the enforcement thereof would result in taking the property of plaintiff for public uses
17 without just compensation and the taking of the plaintiff's property without due process of law and would deny to the plaintiff the equal protection of the law; that the enforcement of said Section 3 of said ordinance would require plaintiff to furnish electric current to the defendant, City of Chariton, and the inhabitants thereof for lighting and power purposes at a rate insufficient to pay the expense of carrying on the business, to-wit, the cost of labor and materials necessarily employed and would fail to give to plaintiff any compensation for invested capital represented by the actual value of the properties necessary for the furnishing of the service; that under the laws of the State of Iowa and under all ordinances of the City of Chariton all others are protected in their property and not subjected to losses resulting from exactions of law; that the business of plaintiff is one of public necessity and essential to life and com-

fort; that a diminution of efficiency in service would be of great and irreparable injury to the public and to all persons; that a failure upon the part of plaintiff to furnish correct and efficient service would result in great and irreparable loss to the defendant city and to all of the inhabitants thereof; that a failure upon plaintiff's part would burden the inhabitants of the City of Chariton with an expense aggregating many thousands of dollars to provide a substitute and that the facilities for substitution are not readily at hand and great injury to the inhabitants would result.

XIII.

The plaintiff shows the court that it has in the City of Chariton a large number of customers, to-wit, approximately 1,150 customers; that the monthly bill of each customer is small; that the defendants and all inhabitants of said City of Chariton assert the validity
18 of said Section 3 and thereby claim that lawful rates are established and that the exaction by plaintiff of any other sum or amount for service rendered would be illegal and payment would be declined; that because of the large number of customers, the enforcement of a higher or compensatory rate would entail an expense, thus greatly increasing the expense account of plaintiff; that in most instances the monthly bill of each customer would be insufficient to pay the cost of collection by court process; that unless rates are collected promptly as they accrue large losses would be incurred in that many customers are financially irresponsible and that people now inhabiting Chariton remove from the city and to a considerable extent the inhabitants of said City change by people moving away and others coming in; that the losses occurring on this account would be large; that plaintiff has no plain, speedy and adequate remedy at law and for the reasons hereinbefore alleged the remedy at law is wholly inadequate.

XIV.

Plaintiff further alleges that since the finding of the Board of Conciliation hereinbefore referred to the plaintiff requested defendants to regulate and fix such rates as would compensate plaintiff for the service required of it and that defendants still refuse and continue to demand compliance by plaintiff with Section 3 of the ordinance above referred to; that the defendants threaten to enforce said ordinance and to advise all inhabitants to refuse to pay rates higher or different from the rates established by said ordinance and that great and irreparable loss will result to plaintiff unless the announced purpose of defendants shall be restrained by the injunctive powers of this court, and that a multiplicity of suits will result and that defendants will carry out their threats unless so prevented by the Court.

19 To the end therefore, that the plaintiff may have the relief which it can obtain only in a court of equity and that the defendants may answer this, the Plaintiff's bill of Complaint, but not under oath, an answer under oath being hereby waived, the plaintiff prays;

1. That a decree of this court shall be entered finding, adjudging and decreeing that Section 3 of the Ordinance of the City of Chariton, a copy of which is attached hereto as "Exhibit A" has become and is null and void because the enforcement thereof will deprive plaintiff of its property without due process of law and would take its property for public use without just compensation and would deprive plaintiff of the equal protection of the law and for each and all of said reasons.

2. That it be further found, adjudged and decreed by the court that plaintiff has no speedy and adequate remedy at law for the injury which would result from the enforcement of said ordinance and the required compliance therewith by plaintiff and that plaintiff would suffer great and irreparable injury.

3. That a writ of injunction shall issue out of this court and under the seal thereof directed to and against the defendants, to-wit, the City of Chariton and the Mayor and members of the city council as named, restraining and enjoining them and each of them and their successors in office and all officers, agents, servants and employes of the city of Chariton, acting for said city or under and by authority of said city or any of the officers thereof named herein or their successors from enforcing or attempting to enforce Section 3 of said ordinance.

20 4. That the plaintiff may be given by this court through its orders and decrees such other and further relief as the court shall deem equitable and just.

5. The plaintiff further prays that a writ of subpœna of the United States of America shall issue out of this honorable court and under the seal thereof directed to the defendants and each of them commanding said defendants and each of them upon a day therein named, to appear and answer this petition of plaintiff, but not under oath, as answer thereto has been waived by plaintiff.

6. That upon the filing of this petition and presentation thereof to the court that a temporary restraining order or provisional injunction be granted restraining and enjoining the said defendants and each of them, their successors, agents and employes from enforcing or attempting to enforce the provisions of Section 3 of the ordinance hereinbefore referred to and that such restraining order shall continue throughout the pendency of this case and the plaintiff will ever pray.

SOUTHERN IOWA ELECTRIC COMPANY,

(Signed) By EMMET TINLEY,
W. E. MITCHELL,
J. C. PRYOR, JR.,
D. L. ROSS,
Counsel for Plaintiff.

TINLEY, MITCHELL, PRYOR & ROSS,
Att'ys for Complainant,
Council Bluffs, Iowa.

21 STATE OF IOWA,
Pottawattamie County, ss:

I, Willis Todd, being first duly sworn upon oath say that I am President of the Southern Iowa Electric Company, the above named corporation, complainant; that said complainant is a corporation organized under the Laws of the State of Iowa; that as President I have charge of the business of the corporation; that I am fully informed as to all of its property and the business carried on by it in different cities in the State of Iowa, and that I have read the foregoing bill of complaint and know the contents thereof and that each and all of the statements therein contained are true in all respects, to the best of my information and belief.

(Signed) WILLIS TODD.

Subscribed in my presence and sworn to before me this 5th day of November, A. D. 1918.

(Signed) JOHN P. ENGELKE,
Notary Public.

22 EXHIBIT A.

Be it Ordained by the Mayor and City Council of the City Council of the City of Chariton:

Section 1. That Edwin B. Perrigo, his heirs and assigns, and he and his assigns are hereafter referred to as grantee, be and hereby is and are granted the right and privilege, subject to the limitations herein specified to acquire, construct, own, operate and maintain lighting, heating and power plants or works in or adjacent to the City of Chariton, County of Lucas and State of Iowa; to lay, place and maintain conduits, mains and conductors, to erect and place poles, posts, brackets, wires, transformers or other requisite fixtures or apparatus, for the supplying or transmitting of electricity for light, heat or power, and steam or hot water for heat or other purposes, in all or any of the streets, avenues, alleys, viaducts, subways and public grounds of the City of Chariton as they are now or may hereafter be laid out or exist within the present or future limits of the city; to acquire and hold any and all real property, easements and rights necessarily to such ends and purposes; to produce electric current for light, heat and power and distribute same, and to produce steam or hot water for heating or other purposes and distribute same through said streets, avenues, alleys, viaducts, subways, and public grounds of said city; to acquire, construct, maintain and operate such plants, structures and appurtenances as are necessary for the conducting and maintaining of such light, heat and power plants, together with all machinery and appliances necessary thereto; and for these purposes the grantee shall have the right to enter upon, through or under any street, avenue, alley, viaduct, subway or public ground for the purpose of removing any pavement or sidewalk therein, or thereon, and making any and all ex-

cavations necessary for the laying of conduits, conductors and mains, erecting poles and attachments and extending same; provided that such use of streets, alleys, avenues, viaducts, subways and public grounds be made with the least possible inconvenience to the inhabitants of said City, that said excavations be protected by barricades when necessary and be lighted at night, and that all sidewalks, pavements and excavations be replaced by and at the expense of the grantee in as good condition as nearly as possible as they were before in, and without unnecessary delay.

Section 2. Said conduits, mains, conductors, posts, poles, brackets, wires and other apparatus and requirements, shall be erected and placed under the supervision of the proper city official, and when practicable shall be placed in the alleys; and shall be placed so as not to interfere with the ordinary traffic on the streets, alleys and public grounds, nor with the flow of water in the gutters; and when placed in the paved streets the grantee shall restore the paving at once to as good condition as nearly as possible as the same was in before the work was done. Should any of the posts, poles, wires, conductors or appliances, authorized hereunder, become unsafe or a menace to public safety, the City Council may by resolution declare the same unsafe and order them removed. The grantee shall hold the city free and harmless from any cause of ac-
23 tion that may arise against it by reason of negligence, carelessness or misconduct of any agents or employees of the guarantee in the erection, maintainance or operation of said plants. Nothing in this ordinance shall be construed to allow the grantee to trim the trees growing on or extending into any street, alley or public ground without first obtaining the consent of the property owner or the proper city official.

Section 3. The grantee shall sell current at rates not to exceed for monthly consumption those named in the following schedules:

Lighting Rates.

1 to 50 K. W. H., 12 cents per K. W. H.
51 to 150 K. W. H., 11 cents per K. W. H.
151 to 300 K. W. H., 9 cents per K. W. H.
301 K. W. H., and over, 8 cents per K. W. H.

Power Rates.

Up to 100 K. W. H., 9 cents per K. W. H.
101 K. W. H., and up to 300 K. W. H., 8 cents per K. W. H.
301 K. W. H. and up to 500 K. W. H., 7 cents per K. W. H.
501 K. W. H. and up to 800 K. W. H., 6 cents per K. W. H.
801 K. W. H. and up to 1,000 K. W. H., 5 cents per K. W. H.
Over 1,000 K. W. H., Special contract.
Power rates to apply on motors above two horsepower
Meters shall be read monthly and charges made therefor; and a

minimum charge of seventy-five cents per month shall be made for each meter connected where readings at the prevailing rates do not equal said sum.

No meter rent shall be charged.

Street Lighting Rates.

Overhead suspended hooded incandescent street lamps; For 60 candle power lamps or their equivalent, each per annum, $15.00.

For 80 candle power lamps or their equivalent, each per annum, $18.00.

Lamps to be lighted from dusk to dawn each night.

Payment for same to be made in twelve equal monthly installments.

The grantee shall at all times furnish and maintain said lamps.

For five lamp cluster posts, as now installed, each having one top lamp of 80 candle power, to be lighted from dusk to dawn each night, and four bottom lamps, each of approximately 45 candle power, to be lighted from dusk to eleven o'clock P. M., each night or the equivalent of the above in candle power, each post per annum $36.00.

Payment for same to be made in twelve equal monthly installments.

The grantee shall furnish lamp and globe renewals for said cluster posts.

Pumping Rates.

Per kilowatt hour on meter at pumping station, 4 cents.

This rate to include operating care of pump motor or motors and pumps.

The city to pay for supplies and repairs.

24 Section 4. The City shall have the privilege, upon request of the proper authorities, of using, without cost to it, the poles of the grantee for the purpose of maintaining an electric fire alarm or patrol system, so long as said fire alarm or patrol system does not interfere with the efficiency of the light, heat and power service of the grantee.

Section 5. A meter shall be installed on the premises of each consumer for the purpose of measuring the amount of electric current, heat or service furnished, which meter shall be supplied by the grantee; and the grantee shall at all times have free access to said meter for the purpose of reading, testing and repairing the same. A deposit of five dollars ($5.00) for each meter installed may be required by the grantee from each consumer, which deposit will be returned when service is discontinued and customer's bill is paid.

Section 6. Whenever anyone shall move, according to law, any building of such size as to interfere with the wires, poles, equipment, the grantee shall, upon receiving twenty-four hours' written notice,

temporarily remove such wires, poles or equipment, but only upon being compensated for consequent expense or damage.

Section 7. Any person who shall interfere with, cut, injure, break, deface, damage or remove any of the meters, poles, wires, fixtures, conduits, conductors or property used in connection with the business of the grantee, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed one hundred dollars ($100.00).

Section 8. The grantee if so required by said city, shall install electric service for either light or power in all cases where prospective consumers guarantee to install ten sixteen candlepower lamps or their equivalent where the distance does not exceed three hundred feet from any existing line of grantee. The grantee shall furnish, without cost to customers, service wires to connect on the exterior of the customer's building with the wiring of customer's premises.

Section 9. The grantee, by accepting the provisions herein granted, assumes and agrees to erect and install inside the city limits of Chariton, within eighteen months from the date of acceptance hereof, a new light and power plant of sufficient size and capacity, adequate for the city's needs, and agrees to maintain, generate and furnish therefrom all of the electric current for light, heat and power used in said city and furnish to said City of Chariton and its inhabitants current of even and steady voltage for light and power and of such quality as shall be deemed first class, in every respect suitable for the needs of Chariton. Said light and power shall be available at all times, both day and night.

Section 10. The grantee is hereby given, without cost to him, the privilege of using and occupying the grounds whereon the present plant is situated for the operation of the present plant for a period of eighteen months, during the time grantee is erecting and installing the new plant as herein provided. At the end of eighteen months, or upon completion of said new plant grantee shall vacate said grounds and remove all equipment and buildings therefrom.

25 Section 11. The grantee, that is, said Perrigo and his assigns, shall have and possess all and singular the rights, privileges and benefits herein granted for and during a term of twenty-five years from and after the acceptance hereof by the grantee. At the expiration of the term herein granted the City shall have, and hereby reserves, the right to purchase the plant and all of its equipment acquired or constructed under the provisions hereof, including the entire distribution system, and all property and rights and privileges of whatsoever description belonging to the grantee, upon giving to the grantee six months' prior notice in writing of its election to purchase, and by paying the actual value of all thereof in cash; said value, if not agreed upon between the city and the grantee, to be determined by disinterested and competent appraisers, sworn to ascertain said value, one to be selected by the city and one by the grantee;

and in the event the two appraisers so selected cannot agree they shall select a third; and the award of two shall be the award of the appraisers. During the existence of the term herein granted the City shall not purchase electric current from others than the grantee nor construct, acquire or operate any such plant or plants as are named or contemplated herein, or for any of the purposes named herein; and this inhibition shall be and operate as an inducement to the grantee to accept the provisions of this ordinance; and upon this inhibition the grantee may always rely.

Section 12. The grantee shall make a verified statement to the City Council once a year when demanded, showing its gross and net earnings in the operation of its business under this franchise.

Section 13. The grantee shall within ten days after the passage and approval and ratification thereof by the electors of the City of this ordinance, all as provided by law, file a written acceptance hereof with the City Clerk of the City; and in the event the grantee fails so to do no rights shall vest hereunder.

Section 14. This ordinance shall take effect and be in force from and after its passage, approval and ratification as provided by law.

26 Before the Board of Conciliation of the State of Iowa.

EXHIBIT "B."

In the Matter of the Application of the SOUTHERN IOWA ELECTRIC Company for Increased Rates for Electricity in the City of Chariton, Iowa.

Finding and Order of the Board.

Now on this 23rd day of October, A. D. 1918, the above matter coming on for hearing at Des Moines, Iowa, upon application of the Southern Iowa Electric Company for increased rates for electricity in the City of Chariton, Iowa, the applicant appearing by W. R. Roberts, its Sec'y-Treas. and the City authorities having received notice of time and place of hearing failed to appear, the Board examined and investigated their case, heard the evidence offered by the company's representative and discussed the matter under its rules, finds and orders as follows, to-wit:

1. Current for lighting.—That the applicant shall be entitled to receive in said city of Chariton, Iowa, for residence and commercial lighting for the first 50 KWH used per month 15¢; for the next 100 KWH used per month 14¢; for the next 150 KWH used per month 12¢; all excess 11¢; minimum charge of 75¢ per month per meter. An additional charge of 1/2¢ per KWH may be entered on bill but same is to be rebated if bill is paid on or before the 10th day of the month. Applies also to power. J. F. F.

2. Current for Power.—That the applicant shall be entitled to receive in said city of Chariton for power up to 100 KWH 9 3/4¢ per

KWH; 101 to 300 KWHS 8 3/4¢ per KWH; 302 to 500 KWH 7 3/4¢; 501 to 800 KWH 6 3/4¢; 800 to 1000 KWH special contract. Minimum charge of 75¢ per month per meter.

The above rates to be in effect from and after November 1st, 1918, during the period of the war and six months thereafter.

(Signed) TRUMAN A. POTTER,
Acting Chairman.
J. F. FORD,
Secretary.

27 And thereafter to-wit: On the 5th day of November A. D. 1918 there was filed in said cause a Memorandum and order of court which is in words and figures as follows to-wit:

28 In the District Court of the United States, Southern District of Iowa, Southern Division.

No. 4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yenger and W. F. Kull, as members of the City Council of the City of Chariton, Iowa, Defendants.

Memorandum and Order.

Filed November 5, 1918.

Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

I have had presented before this date some sixteen cases similar to this case, and in each case a temporary injunction has been granted,—not that the court has determined in any case that the company is entitled to an increased rate, but upon the well settled law that when a utility company comes into court and alleges that the rates are confiscatory, and asks that a chance be given to prove that they are confiscatory, it, of course, has a right to a trial upon this claim; but a trial would be of no value, at least during the time of litigation, if during such period the company was not allowed to collect the rate which it in good faith asserts is necessary; because if the court finally found that the claimed rate was reasonable, the company could not go back and collect from the hundreds of consumers the balance between what they paid and what they should have paid. So the rule is to allow the collection of the higher rate, but the company must file a bond to return any money collected over a reasonable rate as finally determined by the court.

I state these things at this time to avoid taking the time of counsel and the court in a hearing which might be of no value to anyone.

So I am fixing a time in which objections shall be filed. If when

such objections are presented I find any question upon which there should be a hearing at this time I will notify counsel and fix a time.

29 *Order.*

And now on November 5, 1918, the Bill of Complaint in above case being presented, it is ordered that within five days of the service of this order and a copy of the bill, the defendants shall send to the undersigned at Keokuk, Iowa, objections to the application for temporary injunction, copy of same to be sent to counsel for complainants, and thereupon counsel will be advised of further proceedings.

It will only be necessary to serve copy of bill upon the mayor of the city, but memorandum and order will be served upon each defendant.

(Signed) MARTIN J. WADE,
Judge.

Entered Equity Journal #2, Page #19.

30 And thereafter to-wit: On the 14th day of November A. D. 1918 there was filed in said cause an order for Injunction which is in words and figures as follows to-wit:

31 In the District Court of the United States, in and for the Southern District of Iowa, Southern Division.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE TOWN OF CHARITON, IOWA et al., Defendants.

Order.

Filed November 14, 1918.

Wm. C. McArthur, Clerk.

And now on this 14th day of November, A. D. 1918, the application for temporary injunction herein having been heretofore presented, and it appearing that order h*r*ertofore made by this court has been served upon defendants and that more than five days have elapsed since such service, and that no resistance or objections have been presented to the Court.

It is, therefore, ordered and adjudged: That the defendants and each of them, and all other persons who shall have notice of this order, be enjoined and restrained from in any manner enforcing by civil or criminal proceedings any of the conditions or penalties of any ordinance of the City of Chariton, or any law of the State of Iowa, until final hearing of this case or until further orders herein.

Conditioned, however,

(1) That plaintiff file a bond in the penal sum of Fifteen Thousand Dollars ($15,000), conditioned that the plaintiff shall repay to the users of electricity any sum or amount collected during the continuance of this order, over and above what may finally be determined to be a reasonable and legal rate, this Court retaining sole jurisdiction to determine the amount, time and manner of payment thereof.

(2) That the plaintiff shall keep permanent books and records showing the amount paid by each person using electricity and that a receipt shall be issued for each payment made, and that the books and records shall be open to the officers of the city at reasonable times and shall be subject to orders of the Court at all times.

32 (3) That while this order is in force, the plaintiff shall collect for electricity, rates not in excess of the rates fixed in the order of the Utility Commission, to-wit:

"1. Current for Lighting.—That the applicant shall be entitled to receive in said city of Chariton, Iowa, for residence and commercial lighting for the first 50 KWH used per month 15¢; for the next 100 KWH used per month 14¢; for the next 150 KWH used per month 12¢; all excess 11¢; minimum charge of 75¢ per month per meter. An additional charge of ½¢ per KWH may be entered on bill but same is to be rebated if bill is paid on or before the 10th of the month. Applies also to power. J. F. F.

2. Current for Power.—That the applicant shall be entitled to receive in said city of Chariton for power up to 100 KWH 9¾¢ per KWH; 101 to 300 KWHS 8¾¢ per KWH; 301 to 500 KWH 7¾¢; 501 to 800 KWH 6¾¢; 800 to 1000 KWH special contract. Minimum charge of 75¢ per month per meter."

Witness my hand this 14th day of November, A. D. 1918.

(Signed) MARTIN J. WADE,
Judge.

Entered Equity Journal #2, Page 20.

33 And thereafter to-wit: On the 18th day of November 1918 there was filed in said cause a Bond for Injunction which is in words and figures as follows to-wit:

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel and W. F. Kull, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Bond.

Filed November 18, 1918. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

Know all men by these presents:

That Southern Iowa Electric Company, as principal, and J. P. Greenshields and A. D. Annis, as surety, are held and firmly bound unto the City of Chariton, and H. G. Larimer, as Mayor and J. M. Kneeland, J. P. Connell, R. J. Yengel, and W. F. Kull, as members of the City Council of the City of Chariton, Iowa, and all other persons who shall have notice of the order entered by the District Court of the United States in and for the Southern District of Iowa in the above entitled cause on the 14th day of November, 1918, in the penal sum of Fifteen Thousand Dollars ($15,000.00), well and truly to be paid, conditioned, however, as follows:

Whereas on the 14th day of November, 1918, upon the application of the plaintiff in the above entitled cause theretofore presented to the court, an order was made by the court that the defendants, to-wit,

34 The City of Chariton, Iowa, and H. G. Larimer, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, and W. F. Kull, as members of the City Council of the City of Chariton, Iowa, and all other persons who shall have notice of said order be enjoined and restrained from in any manner enforcing by civil or criminal proceedures any of the conditions or penalties of any ordinance of the City of Chariton establishing or purporting to establish rates to be charged by the plaintiff for the furnishing of electric current in the City of Chariton less than the following rates, to-wit: For residence and commercial lighting and power for the first 50 K. W. H. used per month 15¢; for the next 100 K. W. H. used per month 14¢; for the next 150 K. W. H. used per month 12¢; all excess 11¢; minimum charge of 75¢ per month per meter. An additional charge of one half cent per K. W. H. may be entered on bill and same is to be rebated if bill is paid on or before the tenth of the month.

For electric current furnished for power up to 100 K. W. H. 9¾¢ per K. W. H.; 101 to 300 K. W. H. 8¾¢; 301 to 500 K. W. H. 7¾¢; 501 to 800 K. W. H. 6¾¢; 801 to 1,000 K. W. H., special contract. Minimum charge of 75¢ per month per meter, and,

Whereas the plaintiff by the terms of said order is permitted to charge and receive for electric current furnished in the city of Chariton in accordance with the above rates until final hearing in this case or until further orders therein, and,

Whereas said order is conditioned that the plaintiff shall file a bond in the penal sum of Fifteen Thousand Dollars ($15,000.00) conditioned as in said order provided,

Now therefore, if the said Southern Iowa Electric Company shall pay to the users of electricity any sum or amount collected
35 during the continuance of said order of court over and above what may finally be determined to be a reasonable and legal rate and shall keep permanent books and records showing the amount paid by each person using electricity and that a receipt shall be issued for each payment made and that the books and records shall be open to the officers of the City of Chariton at reasonable times and that the plaintiff shall not collect for electricity furnished by it at rates in excess of the rates above specified and as fixed in said order of court and shall well and truly perform all of the conditions of said order of court and orders made pursuant thereto then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In testimony whereof the principal and surety have executed the foregoing bond this — day of November, 1918.

SOUTHERN IOWA ELECTRIC COMPANY,
By W. B. ROBERTS,
Secy. & Treas., Principal.
J. P. GREENSHIELDS,
A. D. ANNIS,
Surety.

Attest:

EMMET TINLEY,
Counsel for Plaintiff.

36 STATE OF IOWA,
Pottawattamie County, ss:

We, J. P. Greenshields and A. D. Annis, being first duly sworn upon oath say that we are each residents of Council Bluffs, Pottawattamie County, Iowa, and that we signed the foregoing bond as sureties and each for himself says that he is worth in excess of Thirty-Thousand Dollars ($30,000.00) beyond the amount of his death and has property in the Southern District of Iowa of a value exceeding Thirty Thousand Dollars ($30,000.00) beyond the amount of his debts.

J. P. GREENSHIELDS.
A. D. ANNIS.

Subscribed in my presence and sworn to before me this 16th day of November, 1918.

JOHN P. ENGELKE,
Notary Public.

37 And thereafter to-wit: On the 26th day of November A. D. 1918 Answer was filed by Defendants which is in words and figures as follows to-wit:

38 In the District Court of the United States, Southern District of Iowa, Southern Division.

SOUTHERN IOWA ELECTRICAL COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, et al., Defendants.

Answer.

Filed November 26th, A. D. 1918. Wm. C. McArthur, Clerk, by John C. Hunt, Deputy.

To the Honorable Judge of the District Court of the United States for the Southern District of Iowa:

All defendants named in the foregoing entitled cause of action, in answer to the Bill of Complaint filed by the Plaintiff herein, state:

I.

That the defendants deny the allegation contained in paragraph V of the plaintiff's Bill of Complaint to the effect that it expended the sum of Ninety-Five Thousand Nine Hundred and Eighty-eight and 15/100 Dollars in the building of a distributing system for the purpose of lighting the city of Chariton and furnishing power and light to the inhabitants thereof, and states the fact to be that if said sum of money was expended by the said plaintiff such expenditure was made necessary in order to construct a plant to carry on plaintiff's said business of furnishing light and power to other towns and cities and to certain companies and individuals under special contracts. That the defendants are not at this time possessed of sufficient knowledge of the terms of such contracts by which the said plaintiff furnishes said lights and power to said other cities and towns and individuals and companies as to enable the defendants to set them out specifically herein and asks the court to compell the plaintiff to produce the same and show to the court just what
39 part of such alleged expenditure of money was necessary for the purpose of furnishing light and power to the inhabitants of the city of Chariton, in that no injustness will be done to such inhabitants by compelling them to contribute to the expense of lighting and furnishing power to such other cities, towns, companies and individuals.

II.

That the defendants deny all of that part of paragraph VI of the plaintiff's Bill of Complaint excepting that part thereof which sets out the present schedule of rates charged by the plaintiff and excepting also such a part of said paragraph VI as may be expressly herein admitted, and states the fact to be as follows:

That during the month of July, 1914, the city council of the city of Chariton, being desirous of securing an adequate water supply for said city, appointed a committee of citizens of said city to investigate and report as to the best method of securing said water supply. That the said committee reported to the council that it had secured a certain proposition, in writing, from one Edwin B. Perrigo, the assignor to the plaintiff, of the date of August 10th, 1914, by the acceptance of which the city could secure the money with which to obtain the said water supply, and the said committee did thereupon submit to the council said written proposition, duly signed, all of which the said council duly accepted by proper proceedings, all of which proposition and proceedings had in connection therewith are hereto attached and marked "Exhibit 1". That the making of such proposition and the acceptance thereof all constitute a special, legal, valid and binding contract, under the terms of which the said Edwin B. Parrigo bound himself, his successors and assigns to furnish electrical light and power to the said city and its inhabitants for the rates as set out in paragraph VI of plaintiff's said Bill of Complaint, and that said special contract is binding at this time and the court has no jurisdiction to modify or change the same.

40 That at the time the said Edwin B. Parrigo made said written proposition the City of Chariton was the owner of its electric lighting and power plant and that to induce the said city to part with possession of the same, and transfer possession and title thereof to him, the said Edwin Parrigo not only agreed in writing to furnish the product of the said light and power plant at the rate above referred to, but he held out and represented to the citizens of the City Chariton, its council and the said citizens committee that his said proposal would be a great saving as he would furnish said product at a cheaper rate than the said city was furnishing the same, and that relying upon such representations, orally stated, published and made in writing, the said council entered into said special contract and the citizens of the said city ratified the same, and parted with their property, to-wit the said electric light and power plant.

III.

That the defendants have no means of knowing the amount of money the plaintiff has invested in its said enterprise, the amount of capital necessary to maintain the same, the amount of its current expenses, the amount of money it has in good faith borrowed and owes or the amount of its present and past income, and the defend-

ants therefore deny each and every allegation contained in the plaintiff's Bill of Complaint in reference thereto.

IV.

The defendants deny that the plaintiff has ever presented to the officials of the said city any full and complete statement of its affairs, but states it has failed to present any statement excepting its conclusions, and even then it refused to leave such statement with the council for its examination and consideration. Defendants further state that the officer representing said plaintiff corporation refused to be questioned by the city officials, and that under the
41 conditions as herein set out it is inequitable, unjust and unlawful to compel the defendants to defend this injunction suit, and under no circumstances should the issuance of an injunction be considered by the court until the plaintiff has made a full, complete and truthful statement of its financial condition, in such a manner as will enable the said officials to determine the exact conditions, is made.

V.

That the rate established by the special contract "Exhibit A" attached to plaintiff's Bill of Complaint and "Exhibit 1" attached to defendants' answer, is just reasonable and adequate, and furnished and procures to the plaintiff a fair return on all capital invested and all expense incurred by it in supplying the individual consumer residing in the city of Chariton with electricity. That the said rate is the highest rate paid by any one of the plaintiff's numerous patrons, and that if the said plaintiff is sustaining any loss it is not because of the unreasonableness of the rate which it seeks by this action to raise, but because of loss which it sustains because of its contracts with patrons and consumers of its product outside of the city of Chariton, and that the court appealed to has no jurisdiction, by injunction or otherwise, to compel the citizens of the city of Chariton to make up for such loss.

VI.

That on or about the 15th day of November, 1918, the said plaintiff, without any authority whatsoever being granted to it, arbitrarily increased the rate to the individual consumer of its product within the city of Chariton to an amount which is unreasonable, unfair and unjust, all of which is shown by a copy of its statement mailed to said consumers, attached hereto, marked "Exhibit 2" and made a part hereof, which increased rate is in direct violation of the
42 special contract herein referred to and the ordinance.

VII.

That said special contract and ordinance are wholly valid and in force and effect at this time, and it is the legal duty of the defendants to see that the same are fully enforced, and until the same are set aside and declared void and of no effect the court has no jurisdiction to prevent the defendants, the duly and legally constituted officers of the city of Chariton, from performing their plain duty in respect thereto.

VIII.

That the rate as fixed by said special contract must prevail until the same is modified, changed or annul-ed by some duly constituted legal authority, and an injunction cannot legally issue which in effect changes the said rate.

Wherefore the defendants pray that the temporary writ of injunction heretofore issued by this court be dissolved and that the plaintiff's prayer for a permanent injunction be denied.

THE CITY OF CHARITON, IOWA, H. G. LARIMER, AS MAYOR, AND J. M. KNEELAND, C. P. CONNELL, R. J. YENGEL, W. F. KULL, AS MEMBERS OF THE CITY COUNCIL, DEFENDANTS.

(Signed) By J. W. KRIDELBAUGH,
Attorney for Defendant.

43

EXHIBIT 1.

To W. A. Eikenberry, E. A. Anderson, A. B. Gookin, G. W. Ensley, H. B. Blanchard, and Oscar J. Isreal, Committee appointed by the city council of the city of Chariton, Iowa, to invite bids for the purchase of the electric light plant now owned by said city, and to the Mayor and City Council of said city of Chariton:

GENTLEMEN:

Having been advised that the city of Chariton desires to sell its electric light plant, and is willing to grant to the purchaser a franchise for the conducting during a term of years of an electric lighting heating and power business, I hereby make and submit the following proposal:

Appended hereto, and constituting a part of, is a form of an ordinance which, when passed and approved and ratified by the mayor and city council and electors of the city of Chariton, I will accept; and upon the passage, approval, ratification, and acceptance thereof I will pay in cash to the city of Chariton the sum of Sixty Five Thousand Dollars for all the rights, privileges and benefits granted to me or to my assigns, in, by and under said ordinance, and for all

of the property now constituting the electric lighting, heating and power plant of the city of Chariton, and consisting of boilers and piping, engines, generators, exciters, switchboards and all other power house equipment and supplies, and also all poles, wires, cross-arms, braces, transformers, conduits, conductors, meters, or other property and supplies belonging to the transmission system of said city, and also all other property of whatsoever description, including all records and contracts, excepting the real estate pertaining to said electric plant, the electrolier posts and office furniture. The city of Chariton to grant to me or assigns free from rent or cost the possession and use of the real estate and buildings now used by it in the production of electric lights, heat and power for a period of eighteen months after I or assigns become possessed of the property hereinabove described. It is understood that all property hereinabove mentioned pertaining to said electric light plant, excepting real property, electrolier posts and office furniture, which may be now owned or acquired up to the time I come into possession of the plant, shall pass to me and also all records and contracts, and that I shall become possessed of all the property free from all claims or incumbrances.

I further agree to purchase meters now owned by customers of about two hundred and twenty in number at a fair cash value.

I will enter into the street lighting and pumping contract hereto appended.

The expense of a special election called for the purpose of submitting the franchise ordinance to the voters will be paid by me.

I herewith enclose and deposit a certified check in the sum of Five Thousand Dollars as an evidence of my good faith, which, when this proposition is accepted, may be retained, and shall apply upon the purchase price, but which shall be immediately returned to me in the event this proposition is rejected.

This proposition, in order to bind me, shall be accepted by the mayor and city council of said city and the street lighting and pumping contract hereto appended entered into within ten days from the date hereof, and the ordinance hereto appended shall be duly passed, approved and ratified, all as provided by law, within sixty days from the date hereof.

Respectfully submitted,

EDWIN B. PERRIGO.

44 W. A. Eikenberry, E. A. Anderson, A. B. Gookin, G. W. Ensley, Oscar J. Isreal, H. B. Blanchard, Citizens' Committee; J. M. Kneeland, F. B. Curtis, E. F. Gasser, Electric Light Committee of the City Council.

After reading the same, the following resolution was offered and was read by the clerk:

Resolution.

Be it resolved, by the city council of the city of Chariton, Iowa, that the proposals submitted by Edwin Perrigo to purchase the Electric Light Plant of the said city of Chariton, Iowa, for the

consideration of Sixty Five Thousand Dollars (65,000.00) and signed by Edwin B. Perrigo, and accepted and signed by the committee composed of W. A. Eikenberry, A. B. Gookin, E. A. Anderson, G. W. Ensley, O. J. Israel, and H. B. Blanchard, citizens, and J. M. Kneeland, F. B. Curtis, and E. F. Gasser, members of the electric light committee of the city council of the said city of Chariton, Iowa, be and the same is hereby accepted and approved with the terms and conditions therein contained, and further that this council approves the franchise ordinance agreed upon by the said Edwin B. Perrigo and the members of said committee.

J. C. SEWARD,
Mayor.

G. J. GITTINGER,
City Clerk.

A motion was made by Gasser, seconded by Kestler, that the said resolution be passed and adopted, the mayor ordered the clerk to call the roll, which was done, councilmen present and voting as follows:—Kneeland, yea, Curtis, yea, Gasser, yea, Kestler, yea, Boss absent and not voting. There being four yeas and no nays whereupon the Mayor declared the motion carried and the resolution thereby passed and adopted. The following resolution was offered and was read by the Clerk:

Resolution.

Be it resolved, by the City Council of the City of Chariton, Iowa, that the Mayor and the City Clerk be, and they are hereby instructed and directed to sign and execute on behalf of said Chariton, Iowa, conditional contract with Edwin B. Perrigo, for lighting the street and for power for pumping the water, for the said City of Chariton, Iowa, submitted by and executed by the said Edwin B. Perrigo.

J. C. SEWARD,
Mayor.

G. J. GITTINGER,
City Clerk.

A motion was made by Curtis, seconded by Kneeland, that the resolution be passed and adopted, the Mayor ordered the Clerk to call the roll which was done, councilmen present and voting as follows: Kestler, yea, Gasser, yea, Curtis, yea, Kneeland, yea, Boss absent and not voting, there being four yeas and no nays, whereupon the Mayor declared the motion carried. The resolution thereby passed and adopted.

The following is a true copy of the contract referred to in the above resolution:

Agreement—Street Lighting Electroliers, Chariton, Iowa.

Whereas, The city of Chariton, Iowa, may sell and dispose of to Edwin B. Perrigo, his heirs, and assigns, the Electric Light property now owned by the City and the said city desires to secure a contract to light its streets and for pumping water.

45 Witnesseth, That the said Edwin B. Perrigo, his heirs or assigns, hereinafter known as party of the first part, and the City of Chariton, Iowa, hereinafter known as party of the second part, contract and agree each with the other as follows:

The party of the first part, upon acquiring the electric light property now owned by the party of the second part, will furnish to the said party of the second part for the purpose of ligthing its streets, alleys, and public places, overhead suspended hooded incandescent street lamps as are now installed at the following rates and prices:

For 60 candle power lamps or their equivalent each per annum, $15.00, for eighty candle power lamps or their equivalent, each per annum, $18.00. Lamps to be lighted from dusk to dawn each night. Said lamps and equipment to be furnished and maintained by party of the first part.

In the event of any of said lights not burning during the time required by this contract, the city shall have the right to deduct the pro rata amount from the bill for each night such light fails to be lighted for more than three consecutive nights, after receipt by first party of written notice from the proper city official that said light is not burning.

The party of the second part agrees not to order any lamp installed at a greater distance than 250 feet from a then existing inca-descent street lamp.

For five light cluster posts as are now installed, each having one top lamp of 80 candle power, to be lighted from dusk until dawn each night, and four bottom lights each of approximately 45 candle power to be lighted from dusk until 11 o'clock each night, or the equivalent of the above in candle power, each post for the sum of $36.00 per annum or additional posts installed in the future under the same conditions, that is; the post complete to be furnished by the city and installed only by the party of the first part in the same manner as those now placed at the same price; the party of the first part to furnish all lamps and globe renewals and to paint posts once each year and keep globes cleaned. The posts installed under this agreement are to be maintained by said second party. Payment to be made in twelve equal monthly installments.

Pumping Rates.

Party of the first part agrees to sell to the party of the second part electric current of approximately twenty-three hundred (2300) volts and service for pumping of city water at 4 cents per kilowat-

hour as recorded, by a meter furnished by first party to second party at its pumping station; this rate also to include the operating of second party's pump motor or motors and pump or pumps. The party of the second part agrees to pay for all supplies and repairs and to pay the rate named for electric current and service.

The party of the first part agrees to furnish the material for and to construct, at actual cost of material and labor, a transmission line over the most practicable route from the water pumping station of said city located without the corporate limits of said city to the city limits as now existing, and at the city limits connect said transmission line to a transmission line constructed by the party of the first part at its own expense and running within the city from the city limits as now existing to the electric generating station of the first party.

The party of the first part shall, without cost to it, have the free use, in serving other customers, of the transmission line without the city limits, as now existing.

The city agrees to pay the cost of the transmission line without the city limits, as now existing, when same is completed.

All street lights provided for in this agreement shall be placed at such points within the city limits as are designated by the city council or its representative, providing that, should the city require the re-location of any such lights after having them once located, then said city shall pay the actual cost of labor and
46 material necessary to the re-location of such light or lights;

This contract shall take effect and be binding on and after date when the party of the first part shall have acquired the electric property now owned by the city of Chariton and shall continue in full force during the term of the grant by said city to the party of the first part contained in ordinance No. 98 of said city; provided, however, that on the 30th day of September, 1919, said city may terminate this contract by giving to the party of the first part thirty days' written notice prior thereto of its intention so to do; and in the event of the giving by said city of said notice the parties hereto shall thereupon enter into a new contract with all provisions like those herein contained except as to rates and prices, which shall be just and reasonable; and during the continuance of said grant said city shall in five years periods after the 30th day of September 1919, that is on the 30th day of September 1924, the 30th day of Sept. 1929 and the 30th day of Sept. 1934, have the right to terminate any existing contract upon giving to the party of the first part thirty days' written prior notice and entering into a new contract with provisions in all particulars like those in the existing contract except as to rates and prices, which shall be just and reasonable, unless notice is given as herein provided any existing contract shall continue in full force and effect.

In testimony whereof the parties hereto have hereunto set their respective hands in the city of Chariton, state of Iowa, on this 10th day of August A. D. 1914.

EDWIN D. PERRIGO,
J. C. SEWARD,
Mayor of the City of Chariton, Iowa.
G. J. GITTINGER.
Clerk of the City of Chariton, Iowa.

In the presence of
F. M. WAYNICK.

47 EXHIBIT 2.

Southern Iowa Electric Company.

Chariton, Iowa.

November 15, 1918.

To our customers:

The Southern Iowa Electric Company now finds itself unable to continue longer the rates that have been in effect in the past. These rates were considered fair, reasonable and compensatory at the time they were established, but

Conditions Have Changed.

The world war has affected all of you. It has affected us more than most because it has increased our cost of producing electricity without any attendant advance in the selling price or increase in income. Is there a Merchant, Manufacturer, or Jobber in Chariton, who has not advanced his Selling Price to meet his Increased Cost?

The baker cannot remain in business and sell bread made from $2.00 wheat at the same price he sold bread made from $1.00 wheat. The grocer cannot now profitably sell 20 pounds of sugar for $1.00, neither can the butcher sell sirloin steak at 15 cents a pound, except at a loss. Would it be reasonable to expect them to do so?

Applied to the Production of Electricity the same Conditions prevail. There is no mystery about the business of producing and distributing electricity. Three principle things enter into the cost of producing and distributing electricity.

Coal—Supplies—Labor.

Over half of the cost of producing electricity is for coal.

Price per ton before the war	$1.40
Price now per ton	3.20
Increase	129%

We will use nearly 4,000 tons this year to generate electricity used in Chariton.

Supplies have increased from 50 to 200 per cent since the war. Labor has increased 25 to 40 per cent.

We are selling electricity at the same price as before the war and losing money. Some loss last year—many thousand dollars this year.

To continue solvent, we must either Limit Service or Increase Rates. Poor service will retard the development of Chariton and cause great inconvenience to the public.

We feel the best interests of all concerned would be better conserved by raising rates.

Therefore, we trust, in your sense of fairness and justice, and believe that you will approve of the slight necessary increase in rates hereafter announced.

Beginning with November bills and until further notice, electric rates will be:

For Residence and Commercial Lighting.

48 For the 1st 50 kilowatt hours used per month, 15 cts. per kilowatt hour.

For the next 100 kilowatt hours used per month, 14 cts. per kilowatt hour.

For the next 150 kilowatt hours used per month, 12 cts. per kilowatt hour.

For all excess kilowatt hours used per month, 11 cts. per kilowatt hours.

Minimum $1.00 per month.

For Power.

For up to 100 kilowatt hours used per month, 9¾ cts. per kilowatt hour.

For 101 to 300 kilowatt hours used per month, 8¾ cts. per kilowatt hours.

For 301 to 500 kilowatt hours used per month, 7¾ cts. per kilowatt hour.

For 501 to 800 kilowatt hours used per month, 6¾ cts. per kilowatt hour.

Minimum $1.00 per month, per H. P.

An additional one-half cent per kilowatt hour will be added to the bills, same to be rebated if bill is paid on or before the 10th of the month.

After applying these rates we Still Lose Money, but we can keep our heads above water.

Sincerely,

SOUTHERN IOWA ELECTRIC COMPANY.

P. S.—On account of being delayed in advising you of this change in rates one-half the November bill will be charged at the old rate.

49 And thereafter to-wit: On the 28th day of December A. D. 1919 there was filed in said cause order granting leave to file amendment to Bill of Complaint which is in words and figures as follows to-wit:

In the District Court of the United States in and for the Southern District of Iowa, Southern Division.

No. 4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

CITY OF CHARITON, IOWA, et al., Defendants.

Order.

Filed Dec. 28, A. D. 1918. William C. McArthur, Clerk, by John C. Hunt, Deputy.

It is ordered, that permission be and it is hereby given to the plaintiff to file forthwith an amendment to its bill of complaint.
December 28, 1918.

(Signed) MARTIN J. WADE,
Judge.

Entered equity journal #2, page 22.

50 And thereafter to-wit: On the 28th day of December A. D. 1918 Amendment to Bill of Complaint was filed which is in words and figures as follows to-wit:

51 In the District Court of the United States, Southern District of Iowa, Southern Division.

#4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, Iowa, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Amendment to Bill of Complaint.

Filed Dec. 28, A. D. 1918. William C. McArthur, Clerk, by John C. Hunt, Deputy.

To the Honorable Judge of the Disrtict Court the United States for the Southern District of Iowa:

The plaintiff, Southern Iowa Electric Company, permission being first granted by the court, presents herewith the following amendment to its bill of complaint against the City of Chariton, Iowa, and the Mayor and members of the City Council thereof.

1. That prior to the month of July, 1914, the City of Chariton was the owner of an electric light plant and was engaged in the operation thereof, furnishing electric current for the lighting of streets, and public places, pumping water and for the furnishing of light and power to the *City* inhabitants of the city; that said light plant was deficient and in a poor state of repair and incapable of supplying the needs of the City of Chariton for public and private lighting and power; that it then was necessary for the proper furnishing of light and power to the City of Chariton and its inhabitants that said light plant should be re-constructed. Plaintiff further alleges the
52 fact to be that the water supply then possessed by the City of Chariton was inadequate and that a public necessity existed for the procuring of an adequate water supply; that the said City of Chariton was then not possessed with the means with which to reconstruct said light plant and to make the necessary provision for an adequate water supply and was incapable of procuring the necessary money with which to meet such expenses and that during the month of July 1914, the said city proposed to sell its said electric light plant and to enter into a contract with the purchaser thereof for the lighting of its streets and the furnishing of power for the operation of its water works, and said city invited proposals for the purchase of said electric light plant and entered into a contract; that thereupon, to-wit, on the 10th day of August, 1914, one Edwin B. Perrigo presented a written proposal to the regularly appointed committee acting for the

City of Chariton which proposal is in words and figures following, to-wit:

"Omaha, Neb., August 10, 1914.

To W. A. Eikenberry, E. A. Anderson, A. B. Gookin, G. W. Ensley, H. B. Blanchard, and Oscar J. Isreal, Committee Appointed by the City Council of the City of Chariton, Iowa, to Invite Bids for the Purchase of the Electric Light Plant now Owned by Said City, and to the Mayor and City Council of said City of Chariton,

GENTLEMEN:

Having been advised that the City of Chariton desires to sell its electric light plant, and is willing to grant to the purchaser a franchise for the conducting during a term of years of an electric lighting heating and power business, I hereby make and submit the following proposal:—

Appended hereto, and constituting a part of, is a form of an ordinance which, when passed and approved and ratified by the mayor and city council and electors of the city of Chariton, I will accept; and upon the passage, approval, ratification, and acceptance thereof, I will pay in cash to the City of Chariton the sum of Sixty Five Thousand Dollars for all the rights, privileges and benefits granted to me or to my assigns, in, by and under said ordinance, and for all of the property now constituting the electric lighting, heating and power plant of the city of Chariton, and consisting of boilers
53 and piping, engines, generators, exciters, switchboards and all other power house equipment and supplies, and also all poles, wires, cross-arms, braces, transformers, conduits, conductors, meters, or other property and supplies belonging to the transmission system of said city, and also all other property of whatsoever description, including all records and contracts, excepting the real estate pertaining to said electric plant, the electrolier posts and office furniture. The city of Chariton to grant to me or assigns free from rent or cost the possession and use of the real estate and buildings now used by it in the production of electric lights, heat and power for a period of eighteen months after I or assigns become possessed of the property hereinabove described. It is understood that all property hereinabove mentioned pertaining to said electric light plant, excepting real property, electrolier posts and office furniture, which may be now owned or acquired up to the time I come into possession of the plant, shall pass to me and also all records and contracts, and that I shall become possessed of all the property free from all claims or incumbrances:

I further agree to purchase meters now owned by customers of about two hundred and twenty in number at a fair cash value.

I will enter into the street lighting and pumping contract hereto appended.

The expense of a special election called for the purpose of submitting the franchise ordinance to the voters will be paid by me.

I herewith enclose and deposit a certified check in the sum of Five Thousand Dollars as an evidence of my good faith, which, when this

proposition is accepted, may be retained, and shall apply upon the purchase price, but which shall be immediately returned to me in the event this proposition is rejected.

This proposition, in order to bind me, shall be accepted by the mayor and city council of said city and the street lighting and pumping contract hereto appended entered into within ten days from the date hereof, and the ordinance hereto appended shall be duly passed, approved and ratified, all as provided by law, within sixty days from the date hereof.

Respectfully submitted,

EDWIN B. PERRIGO."

That thereafter said proposal was presented to the City Council of the City of Chariton and was by said city council duly accepted and thereupon a written contract was agreed to and executed by the said Edwin B. Perrigo and by the City of Chariton, copy of which said contract is hereto attached, marked "Exhibit A" and made a part hereof.

54

II.

That concurrently with the execution of said contract there was presented to the city council an ordinance purporting to grant to the said Edwin B. Perrigo and his assigns the right to construct, maintain and operate an electric plant with its necessary poles, wires and other fixtures along the streets and public places of the City of Chariton. That the said ordinance so presented, is identical with the ordinance referred to in plaintiff's original bill of complaint, and said ordinance was subsequently adopted as in said bill of complaint alleged.

III.

That by the terms of said contract the said Edwin B. Perrigo obligated himself to pay to the City of Chariton the sum of Sixty-five Thousand Dollars ($65,000.00) for the electric plant and to reconstruct the same and that he and this plaintiff as his assignor, fully carried out the terms of that contract and paid to the city of Chariton the said sum of Sixty-five Thousand Dollars ($65,000.00) and reconstructed the electric plant, expending thereon the sums alleged in the original bill of complaint.

IV.

That according to the terms of the resolution adopted by the City Council of the City of Chariton at the time it invited proposals for the purchase of its electric plant the said City of Chariton imposed an essential condition that the purchaser would agree to furnish current for street lighting and pumping water for the city and also furnish light and power to private individuals and should enter into an

55 agreement in writing to that effect. That according to the terms of the written contract hereinbefore referred to and attached hereto, the said Edwin B. Perrigo and his assigns agreed to sell to the City of Chariton electric current of approximately twenty-three hundred volts and service for pumping city water at four cents per kilowat- hour as recorded by a meter furnished by Edwin B. Perrigo or his assigns, to the City of Chariton, at its pumping station. This rate to include the operation of the city's pump, motor or motors, and pump or pumps. The City of Chariton agreeing to pay for all supplies and repairs and to pay the rate named for electric current and service. The said Edwin B. Perrigo and his assigns agreed to furnish the material and to construct at actual cost of material and labor a transmission line over the most practicable route from the water pumping station of said city, located without the corporate limits of said city, to the city limits, as then existing, and to connect with its transmission lines at the city limits. The said city agreed upon its part to pay for the cost of construction of said transmission line outside of the city limits and that the said Edwin B. Perrigo and his assigns might use the same for other purposes in supplying other customers. That the ordinance above referred to by Section three thereof prescribed maximum rates for both public and private lighting, including the furnishing of power for pumping water for the city.

V.

That immediately after the entering into the contract with the said Edwin B. Perrigo hereinbefore referred to and after the said defendant city had received from him, the said Edwin B. Perrigo the sum of Sixty-five Thousand Dollars ($65,000.00) the said
56 city of Chariton commenced the construction of its new water plant and the sinking of the necessary wells and thereafter in violation of the terms of its contract with the said Edwin B. Perrigo, assigned to this plaintiff, entered into a contract for the purchase of gas engines and equipped its pumping plant with engines to be operated by gas. That the said defendant thereupon declined to construct or pay for the construction of a power line leading from the city limits to its pumping station and refused to permit plaintiff to furnish the power for the pumping of its water. That this plaintiff as the assignee of said Edwin B. Perrigo, in the re-construction of the power plant for the furnishing of electric current for light and power, equipped the same for the purpose of being in a position to furnish current of the voltage required by the said contract and to furnish current for use of the City of Chariton in pumping its water. That plaintiff expended additional sums of money in the production of its equipment in order that the equipment would be fully adequate for the pumping of water for the city of Chariton in addition to furnishing current for its other uses.

VI.

Plaintiff further alleges the fact to be that the rates set forth in Section three of the ordinance above referred to were rates ascer-

tained and determined by the said city of Chariton to be adequate for the furnishing of compensation for the service rendered, and that said rates, taking into consideration the established business in the City of Chariton, the users of current, the street lighting and the consumption of power by the city for the pumping of water, would produce a return sufficient to pay a reasonable income upon the amount
of capital invested and necessarily invested in the property
57 essential for the performing of the service, as well as the expense of operation. That said rates were so determined by said city with the view of equitably distributing the cost of service among the users of power and of light, including the municipality and the inhabitants thereof. That at the time of the adoption of said ordinance and at the time of the action by said city in determining the rate to be charged for each class of service, the said city council was fully advised of the quantity of current consumed and that would be consumed and of the cost of performing the service. That in the making of said rates the said city of Chariton and the officers thereof had in mind the continuance of normal conditions and had full knowledge of the character of supplies necessary for the carrying on of the business of furnishing current and of the cost of labor, and had full knowledge of the expense of freight in connection with the prosecution of such a business. That neither said city nor the said Edwin B. Perrigo nor this plaintiff had in contemplation the possibility of a war or that costs of material and labor would be governed by other sources than the laws of supply and demand. That neither said city nor the said Edwin B. Perrigo, nor this plaintiff had in contemplation the fact that the government might establish arbitrary prices for the cost of all materials used in the production of electric current and greatly increasing the cost thereof. That the rates set forth in said ordinance are interdependent in that it was contemplated by both the said city of Chariton and by the said Edwin B. Perrigo and by this plaintiff that the rates as established, shall pass to me and also all records and contracts, and that I shall become possessed of all the property free from all claims or lished would produce an aggregate sum and that such aggregate sum would be made up from the items coming from private consumers, commercial users, street lighting and pumping rates. That the pur-
pose on the part of said city and the said Edwin B. Perrigo
58 was to produce a set of rates as applied to the then known conditions in the City of Chariton respecting the consumption of current that would produce an adequate return, making reasonable compensation for the amount of capital necessarily and properly invested and the expense of operation. That the failure on the part of said city to permit this plaintiff to furnish electric current for the pumping of water deprived plaintiff of approximately the sum of $2,500.00 per year, and that the said city at the time of its refusal to permit plaintiff to pump said water, had full knowledge that its gross revenue would be reduced by such amount and that the rates as applied to other users would not furnish an adequate revenue to meet the necessary expense of operation and to make a reasonable return upon capital necessarily invested in necessary equipment.

VII.

The plaintiff further says that the said City of Chariton and all of the defendants herein, have persistently declined to permit plaintiff to furnish the current for the pumping of said water and that the said City of Chariton and all of the defendants have had full knowledge that the said Edwin B. Perrigo and this plaintiff paid to said city the sums of Sixty-five Thousand Dollars ($65,000.00) in money and expended large sums of money in the reconstruction of said lighting plant, relying upon the agreement of said city to accept current for the pumping of water and to pay the rate specified in said ordinance for the current so used and for the current required for such use. That the said defendant, each and all of them, have during all of said time, known that the said Edwin B. Perrigo and this plaintiff relied upon the aggregate income as being adequate
59 under normal conditions to meet expense of operation and make a reasonable return and that the said Edwin B. Perrigo and this plaintiff would not have paid said sum of money to the city and would not have expended the large sums of money in reconstruction of said plant excepting that it believed it would have been permitted to furnish the current for the pumping of said water. That the said defendants, each and all of them, at all times have known that each separate rate was fixed at a specific amount, depending upon the demand for current for the aggregate users, including the city, for all purposes, and private consumers. That by reason of the facts herein alleged, the defendants are estopped to claim that the rates established by said ordinance are the maximum rates beyond which rates shall not be fixed.

VIII.

Plaintiff further says that by the terms of the contract hereinbefore referred to the defendant, City of Chariton, agreed to pay the cost of construction of transmission line beyond the city limits as then existing, and to connect with its water plant, and that it was specially provided by said contract that the plaintiff should have the right to use said transmission line without any cost whatsoever for the supplying of customers without the City of Chariton; that it was contemplated by the said Edwin B. Perrigo and his assigns and the City of Chariton at the time said contract was entered into that the said Edwin B. Perrigo and his assigns intended the supplying of electric current to the users thereof outside of the city of Chariton. That the plaintiff repeatedly demanded of the said city that it meet the construction of said line and permit the construction thereof by the shortest route practicable to its water plant, but that the said city refused and thereupon it became necessary for the
60 plaintiff to construct a temporary line for the furnishing of service to the users of electricity outside the City of Chariton, and this required the investment of the sum of about Twenty-five Hundred Dollars ($2,500.00) and that to that extent the capital invested was increased. That at the time of entering into said con-

tract the parties thereto each relied upon the rates specified as being sufficient under ordinary conditions to furnish a return for all capital necessarily invested in the necessary equipment and that the inforced increase of capital by failure of the city to keep its contract required an increased revenue in order that the return contemplated by the parties to said contract should be made. Plaintiff further says that in the construction of said line the same was not constructed along the most practicable and shortest route possible because such route was controlled by the city of Chariton and that it became necessary for the plaintiff to expend only such sum of money as was necessary because of the necessity to hold itself in readiness to comply with the terms of said contract and the construction of a permanent line by the most practicable and shortest route leading from the city to the pumping plant. That it will now be necessary to reconstruct said line in a permanent way and such necessity arises because such line carries electric current at a high voltage and the defendants and all officers of the city of Chariton knew the purpose for which said line was used and to be used and that the same was designed to carry electric current at a voltage of approximately 2,300 volts. That the cost of reconstruction will involve an increase of capital in the amount of approximately Six Thousand Dollars ($6,000.00) and that such increases of capital was brought about by the defendants' failure and refusal to observe the terms of said contract and such increase
61 of capital necessitates an increase of revenue beyond that which was contemplated by the parties at the time said contract was entered into.

The plaintiff asks the court that permission be granted unto it to file this amendment to its bill of complaint and that the defendants and each of them be required within a specific time to answer the same, but not under oath, as an answer under oath is specially waived. The plaintiff prays that it have the relief granted in its original bill of complaint; that it be permitted to charge and receive from the users of current in the City of Chariton the rates set forth in the order of court entered upon the filing of its original bill of complaint. That until such time as the City of Chariton shall receive and pay for current for the pumping of its water that said city and all officers thereof be restrained from enforcing Section Three of the Ordinance referred to in the original bill of complaint. That plaintiff shall have such other and further relief as may be equitable.

SOUTHERN IOWA ELECTRIC COMPANY,
By EMMET TINLEY,
W. E. MITCHELL,
J. C. PRYOR, JR.,
D. L. ROSS,
Counsel for Plaintiff.

62 STATE OF IOWA,
Pottawattamie County, ss:

I, Willis Todd, being first duly sworn on my oath say that I am President of Southern Iowa Electric Company, the above named corporation, complainant in the above entitled action. That said complainant is a corporation organized under the Laws of the State of Delaware; that as President I have charge of the business of the corporation and I am fully informed as to all of its property and as to the business carried on by it. That I have read the foregoing amendment to the bill of complaint and the statements therein contained are true.

WILLIS TODD.

Subscribed in my presence and sworn to before me this 30 day of December, 1918.

[SEAL.] JOHN P. ENGELKE,
Notary Public.

63 EXHIBIT A.

Agreement—Street Lighting—Electroliers—Chariton, Iowa.

Whereas, The City of Chariton, Iowa, may sell and dispose of to Edwin B. Perrigo, his heirs, and assigns, the Electric Light property now owned by said city and the said city desires to secure a contract to light its streets and for pumping water.

Witnesseth, That the said Edwin B. Perrigo, his heirs or assigns, hereinafter known as the party of the first part and the City of Chariton, Iowa, hereinafter known as party of the second part, contract and agree each with the other, as follows:

The party of the first part, upon acquiring the electric light property now owned by the party of the second part, will furnish to said party of the second part for the purpose of lighting its streets, alleys and public places, overhead suspended hooded incandescent street lamps as are now installed, at the following rates and prices:

For sixty candle power lamps or their equivalent each per annum, $15.00. For eighty candle power lamps or their equivalent each per annum, $18.00. Lamps to be lighted from dusk to dawn each night. Said lamps and equipment to be furnished and maintained by party of the first part.

In the event of any of said lights not burning during the time required by this contract, the city shall have the right to deduct the pro-rata amount from the bill for each night such light fails to be lighted for more than three consecutive nights, after receipt by first party of written notice from the proper city official that said light is not burning.

The party of the second part agrees not to order any lamp installed at a greater distance than three hundred and fifty feet from a then existing incandescent street lamp.

For five light cluster posts as are now installed, each having one top lamp of eighty candle power, to be lighted from dusk until dawn each night, and four bottom lights each of approximately forty five candle power to be lighted from dusk until 11:00 o'clock each night, or the equivalent of the above in candle power, each post for the sum of $36.00 per annum, or additional post installed in the future under the same conditions, that is: the post complete to be furnished by the city and installed only by the party of the first part in the same manner as those now placed at the same price; the party of the first part to furnish all lamps and globe renewals and to paint posts once each year and keep globes clean. The posts installed under this agreement are to be maintained by said second party. Payment to be made in twelve equal monthly installments.

Pumping Rates.

Party of the first part agrees to sell to the party of the second part electric current of approximately twenty three hundred (2300) volts and service for pumping of city water at four cents per kilowatt hour as recorded, by a meter furnished by first party to second party at its pumping station; this rate also to include the operating of second party's pump motor or motors and pump or pumps. The party of the second part agrees to pay for all supplies and repairs and to pay the rate named for electric current and service.

The party of the first part agrees to furnish the material
64 for and to construct, at actual cost of material and labor, a transmission line over the most practicable route from the water pumping station of said city located without the corporate limits of said city to the city limits as now existing, and at the city limits connect said transmission line to a transmission line constructed by the party of the first part at its own expense and running within the city from the city limits as now existing to the electric generating station of the first party.

The party of the first part shall, without cost to it, have the free use, in serving other customers, of the transmission line without the city limits, as now existing.

The city agrees to pay the cost of the transmission line without the city limits, as now existing, when same is completed.

All street lights provided for in this agreement shall be placed at such points within the city limits as are designated by the city council or its representative, providing that, should the city require the relocation of any such lights after — have been once located, then said city shall pay the actual cost of labor and material necessary to the relocation of such light or lights.

This contract shall take effect and be binding on and after date when the party of the first part shall have acquired the electric property now owned by the City of Chariton, and shall continue in full force during the term of the grant by said city to the party of the first part contained in Ordinance No. 98 of said city; provided, however, that on the 30th day of September, 1919, said City may terminate this contract by giving to the party of the first part thirty days

written notice prior thereto of its intention so to do; and in the event of the giving by said city of said notice the parties hereto shall thereupon enter into a new contract with all provisions like those herein contained except as to rates and prices, which shall be just and reasonable; and during the continuance of said grant said city shall in five years periods after the 30th day of September, 1919, that is on the 30th day of September 1924, the 30th day of September 1929, and the 30th day of September 1934, have the right to terminate any existing contract upon giving to the party of the first part thirty days written prior notice and entering into a new contract with provisions in all particulars like those in the existing contract except as to rates and prices, which shall be just and reasonable. Unless notice is given as herein provided any existing contract shall continue in full force and effect.

In testimony whereof the parties hereto have hereunto set their respective hands in the city of Chariton, State of Iowa, on this tenth day of August, A. D. 1914.

EDWIN B. PERRIGO,
J. C. SEWARD,
Mayor of the City of Chariton, Iowa.
G. J. GITTINGER,
Clerk of the City of Chariton, Iowa.

In the presence of:

F. M. WAYNICK.

65 And thereafter to wit: On the 24th day of March, A. D. 1919, there was filed in said cause Memorandum Opinion which is in words and figures as follows, to wit:

66 In the District Court of the United States for the Southern District of Iowa.

MUSCATINE LIGHTING COMPANY

vs.

CITY OF MUSCATINE.

FORT MADISON GAS LIGHT COMPANY

vs.

CITY OF FORT MADISON et al.

IOWA GAS & ELECTRIC COMPANY

vs.

CITY OF MOUNT PLEASANT et al.

SOUTHERN IOWA ELECTRIC COMPANY

vs.

CITY OF CHARITON.

IOWA ELECTRIC COMPANY

vs.

CITY OF FAIRFIELD.

Memorandum Opinion.

Filed March 24, 1919.

William C. McArthur, Clerk, by Louis J. Adelman, Deputy.

(1) I cannot do more at this time than to briefly record the conclusions which I have reached after the extensive and helpful arguments presents in these cases. Any attempt to review the wilderness of authorities cited, or to distinguish between apparently conflicting opinions of the courts, would be fruitless, even if I had the time.

The most of the cases at bar involve the question as to whether a specific provision in a franchise ordinance fixing the price which shall be charged by the grantee of the franchise, is binding upon such grantee. It is not disputed that such provision is subject to modification by the city under its general power to "regulate and fix" rates.

It is earnestly contended that the power to "regulate and fix," excludes the power of the city to contract. This may be granted so far as a contract binding on a city is concerned; but I can-

67 not agree that there is any limitation upon the power of the city to "regulate and fix" by contract, as well as by ordinance or resolution.

It is a general rule with relation to the exercise of the power by a city, that "if the mode of exercise is not prescribed in the act or charter conferring the power, or in some other statute, the corporation may exercise the power in any usual and appropriate manner, according to its own discretion. 28 Cyc. 275, and authorities cited.

"this statute expressly confers on cities and towns, the power to provide for the measuring or weighing of hay, coal, or any other article. The manner in which the power conferred shall be exercised is left to the discretion of the corporation, subject, however, to the general rule, that the ordinance must be reasonable. The power given in substance is to regulate, and this implies that the corporation is empowered to do all things essential to the proper exercise of the power expressly conferred." Davis v. Town of Anita, 73 Iowa 325.

In the State of Iowa, a city is given the power to grant franchises without any limitation, except that such franchise shall not extend more than twenty-five years and that no exclusive franchise shall be granted. When this law was passed, it was, and still is, the well settled rule, that "when a municipal corporation has the power to grant or refuse, in its discretion, permission to a public service company, to occupy the streets with its structures, whether such permission be called a franchise, a license, a permit, or a mere designation of the streets to be occupied, it may grant such permission, subject to such conditions as it sees fit to impose." 19 R. C. L. Page 1153, Par. 427. Of course, such conditions must not be against law or public policy.

The city having the power to grant a franchise, the right to impose conditions, is limited only by the terms of the grant of the power. Therefore it is self evident that unless other legislation, and especially section 725 of the Code of Iowa, limits the power with reference to conditions to be imposed in granting franchise,
68 a provision as to maximum rates will be binding.

Sec. 725 confers the power to "regulate and fix," but it does not specify how such power shall be exercised; and under the rule above stated, it has the power to use its own discretion as to how such power shall be exercised.

In Miller vs. City of Webster City, Iowa, 62 N. W. 648, Judge Deemer says,

"As the statute expressly confers upon the city the authority to establish markets and to provide for the weighing of commodities and contains no limitations upon the power granted, the time, manner and expediency of its exercise are left to the discretion of the corporation; and the judgment of its officers upon such matters cannot be controlled by the Courts, so long as they act within the scope of their authority, the discretion of a municipal corporation within the sphere of its powers, is as wide as that possessed by the Government of the state, subject however, to the general rule that the ordinances must be reasonable. The actions of the city Council in the exercise of expressly delegated powers cannot be questioned upon the ground that it is in conflict with public interests."

The term "regulation" is very broad. It is said that an ordinance "is not so comprehensive as 'regulation,' and is more solemn and formal than 'regulation.'" 28 Cye. 348.

Judge Shiras, in Kimball versus City of Cedar Rapids 100 Fed. 802, uses the words, "a contract regulating the rates to be charged by the company."

It ought to be a fair inference that if the legislature intended to limit the exercise of the power to "regulate and fix" to conditions expressed by ordinance that it would have so stated. We must always bear in mind in dealing with municipal problems that the powers of the municipality are not always exercised with formality and I feel that this fact is kept in mind in the enactment of legislation of cities and towns.

Of course, any contract regulating rates, must be in the nature of things, "one sided," so far as the rate is concerned. This is true because the city reserves to itself the power to change the rate at any time, subject only to the general rule that the new rate fixed
69 must be reasonable.

But I see no objections to a contract understandingly made which provides that the city shall charge a maximum rate which shall continue until such period as the same becomes unreasonable and that at such times the city reserves the right to modify the same.

Opposed to the foregoing views, counsel presents strong reasons in public policy, why the law should not be so construed. Of course, the matter of public policy can only be considered here, in an effort to construe the legislation. There are sound reasons in public policy, why the city should not be allowed to bind a corporation by a contract for a rate which does not bind itself: but there are other opposing reasons in public policy, which to my mind overcome every suggestion in support of the contention of the utilities companies. It is a matter of common knowledge that franchises are frequently granted—sometimes after spirited competition and often after bitter controversy, which franchises contain a definite provision, that, during the term of the franchise, no more than a certain sum named shall be charged for public service.

There can be no question, that heretofore, the people voting upon franchises, have believed such conditions to be valid, and I must assume that Utility Companies acquiring franchises containing such conditions, also assumed that such conditions were valid.

It is of the highest importance, that the confidence of the people in the law, and especially in the sacredness of contracts shall not be weakened. Every franchise, and every power, under legislation is construed most strongly against the grantee of a franchise. It is self evident that to now hold that conditions relating to rates solemnly agreed to are without force, would have a strong tendency to undermine the confidence of the public in the law, and would
70 have a tendency to put Utility companies under suspicion of repudiating their obligations.

There is much force in the suggestion, that regulation by contract should be permitted, especially with reference to smaller towns which cannot well afford the investigation and the trial of the question of the reasonableness of rates from time to time and I believe it would be in the interest of said communities, to have a law permit-

ting a contract binding both sides as to rates, for reasonable period of time, say, three or five years. This would stabilize conditions for the utility company in the city or town, and avoid expensive and unpleasant controversies.

It is, of course, important that Utility companies shall receive reasonable compensation for what is furnished. Upon the showing before the court, (which for the trial of this issue I assume to be true) it is apparent that some of these companies cannot continue under the contract rates, because they have no source of income, except the money received for the commodity furnished, and war conditions have radically increased the cost of production, so that a rate fixed at the time the franchise was granted a few years ago, may be utterly inadequate at the present time to pay even current expenses; but these are conditions which the court cannot relieve, as has been recently held in Columbus County against city of Columbus, 253 Fed. 499, and other cases.

(2) But there are other considerations. These cases are brought upon the claim that because the rates are confiscatory, the utility companies are deprived by the State of property, without due process of law, and that they are denied the equal protection of the law.

The fourteenth Amendment to the Constitution of the United States, provides—"nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to
71 any person within its jurisdiction, the equal protection of its laws."

The State, (and the municipality, which is an arm of the State) shall not "deprive any person," etc., At the foundation of these cases, is the problem as to whether upon the facts, the state, or the municipality, has deprived the Utility companies of property, without due process, or whether the state or municipality, is denying the "equal protection of its laws."

The Courts are ever ready to enforce the provisions of the Constitution of the United States: But in order to interfere with state or Municipal legislation, it must appear that there is some affirmative act, which constitutes the "deprivation" or the "denial," specified in Article Fourteen.

When an ordinance is passed by a city council, under authority of the state, it is an act of the state, and if it deprives one of his property without due process, or denies equal protection, the act will be enjoined, for the constitution is sacred and must, under all circumstances, be upheld.

But has the State, or the municipality, in these cases, done any act which violated the constitution, Except Insofar as such act has been consented to by the Companies?

It is fundamental that every individual constitutional right be waived.

"A person may, by his acts, or omission to act, waive a right which he may otherwise have under the provisions of a constitution; and where such acts or omissions have intervened a law will be sustained which otherwise might have been held invalid, if the party making the objection had not, by prior acts, precluded him-

self from being heard in opposition; thus a person who has participated in proceedings under a Statute, or who has acted under the statute and in pursuance of the authority conferred by it, or who has claimed the benefit of the statute to the detriment of others, or who asserts rights under it, may not question its constitutionality."
12 Corpus Juris, P. 769, Sec. 190, etc.,—, and cases cited.

Even in criminal cases, "those constitutional gurantees which are in the nature of personal privileges of the accused,
72 may be waived by him, and therefore he may not question the constitutionality of a statute under which he has made such a waiver." 12 Corpus Juris 774, Sec. 203.

It must be apparent that if the confiscatory rate is fixed, not by the municipality, but by the Utility Company, that the State has done no act "depriving" the company of its constitutional rights. It must likewise be apparent, that if the rate is the joint act of the Utility Company and the city if the Utility Company has consented to the rate, that it has waived the constitutional right which it might otherwise assert, and I am convinced that if a rate is fixed by agreement of the Utility company, which at the time is a reasonable rate, but which thereafter becomes confiscatory without any act of the state, but simply as a result of industrial conditions, that the prohibition of the fourteenth amendment upon the State, is not violated by the State.

This is a serious business, restraining the sovereign act of the state. There is no constitutional guarantee of compensatory rates. So far as income and profits are concerned, the Utility corporation stands exactly in the same position as the building corporation or the street improvement company. It may make money—it may lose money, but only when the state has acted affirmatively to the deprivation of reasonable income upon actual investment can constitutional guarantee be invoked; and where the Utility Company consents to the act of the state, there is not that "deprivation" or denial "which the constitution forbids."

So that I am satisfied that the Utility Companies are bound by these contracts.

I realize, of course, the hardship which this construction imposes. I realize that it is inequitable to expect a Utility company to furnish service which cannot be paid for out of the income. It may
73 not be here inappropriate to quote from the opinion in the Columbus Railway case Supra:

"It cannot be denied on the showing made, that the present war has greatly increased the cost of street railway operation. The award of the National War Labor board in the wage controversy, cannot be regarded otherwise than binding on the company, and the increase of wages granted by the company pursuant thereto, cannot, in any fair sense, be considered as its voluntary act. It is also undoubtedly true, on the showing made, that complainant cannot, under existing conditions, finance any improvements required to meet new demands for heat, light, and power, or for increased street railway

facilities, and its failure so to do must injure the interests of the defendant and its inhabitants as much as it injures the complainant.

"Prolonged operation under these conditions would seem to be a manifest impossibility, and must result in impairing the street railway service and gr-eviously harming the people and business of the city. These considerations do not, for the reasons already stated, present any ground upon which a court can grant relief, for it has power only to declare the law and apply it. A sound public policy forbids usurpation by the Courts of Governmental power lodged in other departments of the government. No power inheres in a court, either to make contracts for parties, or absolve them from the effect of their contracts, provided the parties are competent in law to contract, and no fraud intervenes in the making thereof.

In view of these well recognized limitations of the Court's power I can only suggest that the present emergency, likely as it is to become much greater in the near future, calls urgently for some kind of accommodation of temporary compromise between the parties."

Much of the controversy in these cases arises out of a misunderstanding between the companies and the people of the communities which they serve. There ought not to be any misunderstanding. The public should interest themselves sufficiently to understand definitely the viewpoint of the company, and it is not too much to hope that in these cases, where existing contracts, by virtue of war conditions, impose great hardships, that temporary arrangements may be made by which the situation may be solved for the time being.

The Record in These Cases.

These cases have been set down for trial by order of the Court, upon the issue as to the validity of the contracts. I am
74 not sure that the record is in shape to present this issue appropriate for review in the higher court. Of course, I have assumed and counsel have assumed, for the sake of this question, that the contract rates are confiscatory, but I am not sure that the record justifies this assumption.

To save any possible question, in the interest of all parties, it ought to be admitted of record, for the purpose of this hearing, that the contract rates in each individual case, are confiscatory. So important is this in my present view, that I feel that it would be necessary to take testimony upon this point unless it is handled by a stipulation.

I therefore suggest, that counsel for the plaintiffs in these cases, prepare a stipulation which they feel will make the record, and submit it to counsel for the company, and by mutual co-operation, I am satisfied that without waiving anybody else's rights, the record can be completed. In this way the matter can be presented to a higher court without much expense, and with more satisfaction in the consideration of the question involved.

After this is done, the Court will enter an order of record, and

will at that time hear counsel for the plaintiffs upon their request for a continuance of the restraining order, pending appeal. Application for such continuance to be prepared and served upon counsel as the rules of this court provide.

(Sgd.) MARTIN J. WADE,
Judge.

75 And thereafter to-wit: On the 28th day of April A. D. 1919 an order was filed in said cause granting leave to file Amended and Substituted Answer which is in words and figures as follows to-wit:

In the District Court of the United States, Southern District of Iowa, Southern Division.

4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY

vs.

CITY OF CHARITON, IOWA, et al.

Order.

Filed April 28, A. D. 1919. Wm. C. McArthur, Clerk, by John C. Hunt, Deputy.

And now on this 28th day of April, 1919, in the above entitled case, the defendants are given leave to file Amended and substituted answer.

MARTIN J. WADE,
Judge.

Entered Equity Journal #2, Page #31.

76 And thereafter to-wit: On the 28th day of April A. D. 1919 there was filed in said cause Amended and Substituted Answer which is in words and figures as follows to-wit:

77 In the District Court of the United States, Southern District of Iowa, Southern Division.

#4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARMIER, as Mayor, et al., Defendants.

Amended and Substituted Answer.

Filed April 28th, A. D., 1919. Wm. C. McArthur, Clerk, by John C. Hunt, Deputy.

To the Honorable Judge of the District Court of the United States in and for the Southern District of Iowa:

Comes now the defendants in the above entitled cause of action and, with leave of the court, file this Amended and Substituted Answer to the Plaintiff's Bill of Complaint and the Amendment thereto, as follows:

The defendants state:

Count I.

1. That they admit all that part of Paragraph Five of the Plaintiff's Bill of Complaint excepting only the allegation as to the costs of the plaintiff's plant; expressly admitting that the Ordinance, a copy of which is marked Exhibit "A" and attached to the plaintiff's Bill of Complaint, was duly passed by the City Council of the City of Chariton, Iowa, and approved by the city mayor upon the same having been duly ratified by the qualified electors of the city at an election held for the purpose of submitting said Ordinance, all as by law provided, and that "in accordance with the terms of the said contract with the City of Chariton" the plaintiff installed its power and electric lighting plant within the said city. That the defendants admit that the said ordinance was duly accepted by the assignor of the plaintiff herein and that said plaintiff has been furnish-
78 ing light and power to the said city and the inhabitants therein under the terms as provided for in said ordinance and for the rates as specified in Section Three of said ordinance, and that said ordinance has never been changed, amended or modified in any manner whatsoever, and said plaintiff continued to furnish said light and power to the said city and its inhabitants at the rates as provided for in said Section Three up and until the time that the order for the temporary injunction was mere herein.

2. That the said ordinance upon being duly passed and accepted as alleged in the plaintiff's Bill of Complaint, became a valid, bind-

ing and express contract obligating the said plaintiff to furnish the said light and power for the said city and its inhabitants at the time and in the manner as provided by said ordinance, which contract can not be impaired under the Constitution of the United States.

3. That the facts as set forth in the plaintiff's Bill of Complaint and amendment thereto, do not constitute a valid cause of action against the defendants or any of them and do not entitle the plaintiff to the relief demanded.

4. That at the time said ordinance was passed and accepted, and at all times since the city of Chariton, Iowa was vested by law with full power to enter into contracts fixing rates to be charged by persons, firms or corporations for its product furnished to the said city and its inhabitants; and that said rates as set out in said Section Three were fixed by mutual agreement upon the part of the said plaintiff and the City of Chariton, which agreement is binding and valid and the Court has no jurisdiction to set aside, change or modify the same.

79 5. That at the time the said franchise or ordinance was passed and accepted, said city was empowered by laws of the State of Iowa to grant to the plaintiff the use of its streets and alleys within the said city for the purpose of furnishing to the said city and its inhabitants light, power etc., and in consideration of the said grant the plaintiff by the acceptance thereof agreed and contracted with the said city and its inhabitants to furnish its product at a certain specified rate as set out at said Section Three of said ordinance, and the said city thereby became bound to comply with the agreement so made upon its part, and the said plaintiff became bound to comply with the terms of said Section Three in consideration of the said grant.

6. That the said plaintiff by reason of its act in accepting the franchise or ordinance and the benefits accruing to the plaintiff by reason thereof, has estopped iself from denying that the rates as provided for in said franchise are binding upon it.

7. That they deny that the plaintiff is entitled to earn any greater sum of money than that which it will receive in return for its product from the said city and its inhabitants, paid for at the rate and under the terms as specified in said Section Three of said ordinance.

8. That the plaintiff is bound to furnish said product to the said city and its inhabitants at the rate and under the terms as specified at Section Three of said ordinance for the full period as provided for therein unless the said ordinance shall be hereafter changed or modified by the said city of Chariton, as by law authorized or by mutual agreement between the parties thereto.

9. That they deny that there is any issue in this case involving the construction of the provisions of the United States, prohibiting

the taking of property for public use without full compensa-
80 tion therefor, viz: the Fifth and Fourteenth Amendments to the said Constitution, or the provisions prohibiting the taking of property without due process of law, viz: the said Fifth and Fourteenth Amendments to the said Constitution, or the provisions guaranteeing equal protection of the law, viz: the Fourteenth Amendment to the said Constitution. And defendants allege that under no circumstances can such provisions of the constitution or the construction thereof be involved in this issue until such time as the city of Chariton shall take some affirmative action changing or seeking to change the rates or the terms of said Section Three of the said ordinance, and therefore, the Court is without jurisdiction to grant any part of the prayer of the plaintiff's Bill of Complaint or Amendment thereto.

Count II.

1. That the defendants deny the allegation contained in paragraph V of the plaintiff's Bill of Complaint to the effect that it expended the sum of Ninety-five Thousand Nine Hundred and Eighty-eight and 15/100 Dollars in the building of a distributing system for the purpose of lighting the city of Chariton and furnishing power and light to the inhabitants thereof, and states the fact to be that if said sum of money was expended by the said plaintiff, such expenditure was made necessary in order to construct a plant to carry on plaintiff's said business of furnishing light and power to other towns and cities and to certain companies and individuals under special contracts. That the defendants are not at this time possessed of sufficient knowledge of the terms of such contracts by which the said plaintiff furnishes said lights and power to said other cities and towns and individuals and companies as to enable the defendants to set them out specifically herein and asks the court to compel the plaintiff to produce the same and show the court just what
81 part of such alleged expenditure of money was necessary for the purpose of furnishing light and power to the inhabitants of the city of Chariton, in that no injustice will be done to such inhabitants by compelling them to contribute to the expenses of lighting and furnishing power to such other cities, towns, companies and individuals.

2. That the plaintiff Company at this time and for more than a year past, has been furnishing light and power to the city of Chariton, the city of Osceola, the towns of Russell, Lucas, Woodburn, Murray and Lacona, and is also furnishing light and power to certain companies and individuals both inside and outside of the said city of Chariton, under special contracts; and that if the said plaintiff is losing any money as alleged in its Bill of Complaint, it is by reason of an inadequate rate which it procures under such special contracts or by reason of an inadequate rate paid to it by said cities or towns for its said product.

3. That the defendants deny all that part of paragraph VI of Plaintiff's Bill of Complaint excepting that part thereof which sets

out the present schedule of rates charged by the plaintiff and excepting also such a part of said paragraph VI as may be expressly herein admitted, and states the facts to be as follows: That during the month of July, 1914, the city council of the city of Chariton, being desirous of securing an adequate water supply for said city, appointed a committee of citizens of said city to investigate and report as to the best method of securing said water supply. That the said committee reported to the council that it had secured a certain proposition, in writing, from one Edwin B. Perrigo, the assignor to the plaintiff, of the date of August 10th, 1914, by the acceptance of which the city could secure the money with which to obtain
82 the said water supply, and the said committee did thereupon submit to the council said written proposition, duly signed, all of which the said council duly accepted by proper proceedings, all of which proposition and proceedings had in connection therewith are hereto attached marked Exhibit 1, that the making of such proposition and the acceptance thereof all constitute a special, legal, valid binding and express contract, under the terms of which the said Edwin B. Perrigo bound himself, his successors and assigns to furnish electricity, light and power to the said city and its inhabitants for the rates as set out in paragraph 6 of plaintiff's said bill of complaint, and that said special contract is binding at this time and the court has no jurisdiction to modify or change the same.

That at the time the said Edwin B. Perrigo made said written proposition, the city of Chariton was the owner of its electric lighting and power plant and that to induce the said city to part with the possession of the same, and transfer possession and title thereof to him, the said Edwin Perrigo not only agreed in writing to furnish the product of the light and power at the rate above referred to, but he held out and represented to the citizens of the city of Chariton, its counsel and the said citizens' committee that his said proposal would be a great saving, as he would furnish said product at a cheaper rate than the said city was furnishing the same, and that relying upon such representation, orally stated, published and made in writing, the said counsel entered into said special contract and the citizens of the said city ratified the same, and parted with their propery, towit, the said electric light & power plant and the plaintiff now retains possession of the same. That by reason of all such representations so made by the said plaintiff and so relied upon by the said council of said city and its inhabitants, the plaintiff
83 is now estopped to deny the validity of the said contract so made and also estopped to deny that it agreed to furnish electric current to the said city and its inhabitants at the rates as set forth in said section 3 of said ordinance No. 98.

4. That the defendants had no means of knowing the amount of money the plaintiff has invested in its said enterprise, the amount of capital necessary to maintain the same, the amount of its current expense, the amount of money it has in good faith borrowed and owes, or the amount of its present and past income and the defendants, therefore, deny each and every allegation contained in the plaintiff's bill of complaint in reference thereto.

5. The defendants deny that the plaintiff has ever presented to the officials of the said city any full and complete statement of its affairs, but states it has failed to present any statement excepting its conclusions, and even then it refused to leave such statement with the counsel for its examination and consideration. Defendants further state that the officer representing said claimant corporation refused to be questioned by the city officials, and that under the conditions as herein set out it is inequitable, unjust and unlawful to compel the defendants to defend this injunction suit, and under no circumstances should the issuance of an injunction be considered by the court until the plaintiff has made a full, complete and truthful statement of its financial condition as made to said city, in such a manner as will enable the said officials to determine the exact conditions.

6. That the rate established by the special contract exhibit "A", attached to plaintiff's bill of complaint, and Exhibit "1" attached to defendant's answer, is just, reasonable and adequate and
84 furnished and procures to the plaintiff a fair return on all capital invested and all expense incurred by it in supplying the individual consumer residing in the city of Chariton with electricity. That the said rate is the highest rate paid by any of the plaintiff's numerous patrons, and that if the said plaintiff is sustaining any loss, it is not because of the unreasonableness of the rate which it seeks by this action to raise, but because of loss which it sustains because of its contracts with patrons and consumers of its products outside of the city of Chariton, and that the Court appealed to has no jurisdiction, by injunction or otherwise, to compel the citizens of the city of Chariton to make up for such loss.

7. That on or about the 15th day of November 1918 the said plaintiff, without any authority whatsoever, being granted to it, arbitrarily increased the rate to the individual consumer of its products within the city of Chariton to an amount which is unreasonable, unfair and unjust, all of which is shown by a copy of its statement mailed to said consumers, attached hereto, marked Exhibit "2" and made a part hereof, which increased rate is in direct violation of the special contract herein referred to and the ordinance.

8. The defendants admit that the city of Chariton entered into the contract attached to the plaintiff's amended bill of complaint and marked Exhibit "A" which contract is also attached to the defendants Answer and marked Exhibit "1" but the defendants deny that it was the intention of the parties to the said contract that the city should be bound thereby not to use any other power it might see fit for the purpose of pumping water, and the defendants state that such contract does not bind the said city to not so use other power for the said purpose, as is alleged in paragraph four of plaintiff's bill of complaint.

85 9. That they deny all that part of paragraph five of the plaintiff's amendment to its bill of complaint which states that the plaintiff expended additional sums of money in the production of equipment for the purpose of pumping water for the city of Chariton.

10. That the issue as to whether or not the city has performed a breach of said contract for pumping water is one of law and not of equity, and that the failure of the said city to purchase current for said pumping cannot be construed as an abandonment of said ordinance contract.

That the plaintiff has a plain, speedy and adequate remedy at law if there has been any breach of the said contract, and there is no threatened injury by reason of the said alleged breach and an injunction will not lie by reason thereof.

11. That a very large portion of the tax payers of the said city are not users of electric current in their homes, but do derive benefit from the lighting of the streets and from the water plant, and that if the city is liable for a breach of contract as alleged in the said amended bill of complaint the damages due to said company should be assessed and determined in a proper court and those tax payers would then be compelled to pay their share of such damage, but that if the relief sought by the plaintiff herein should be granted by a court of equity, the burden of the payment of all of the said damage, if any, would fall upon the private consumers of current and not upon the city of Chariton and the tax payers of the said city in general.

12. That even though the issues sought to be raised by the amended bill of complaint were triable in equity, the plaintiff is not entitled to the relief demanded for the reason that the said ordinance No. 98 expressly provides in Section 3 thereof that the plaintiff shall furnish the "operating care of the pump, motor and
86 pumps and motors," and the defendants state the facts in reference to such provision to be as follows:—that after the said ordinance No. 98 and the said contract were voted upon and approved and the said Edwin Perrigo went before the City Council of the city of Chariton, Iowa, and refused to comply with the terms of the said Section 3 and furnish the operating care of the pumps and motors, and declined and refused to furnish such care for more than one pump and one motor. That at the time the said ordinance was passed and voted upon the city was operating three pumps at three separate and distinct wells, all of which was well known to the said Perrigo at the time he made the said proposal to the said city and asked for the enactment of the said ordinance. That the said city had to have said pumps operated in order to supply its citizens with water, and upon the said refusal being made by the said Perrigo, the city council, at the instance and request of the said Perrigo, passed the following resolution, of the date of September 21st, 1914.

"Resolved further that until a permanent water supply is provided by the city, that clause in ordinance No. 98 relating to operating care shall be construed to mean operating care at main or principal pumping station only."

That the said Perrigo and the plaintiff company did thereafter refuse and fail to furnish the operating care for the said cities other two pumps, and did by such act voluntarily abandon their agreement to furnish power as provided for in said ordinance and that the said Perrigo was advised at the time he refused to furnish said operating care that his action would be construed by the city as an abandonment of his said contract to furnish said power for said purpose.

87 13. That later or about a year after the said resolution as above set out was passed and the said contract to furnish power at a given rate was so abandoned by the said Perrigo, the said Plaintiff company did request the said city to use the said power to pump water with and did request the city to construct a line to its waterworks plant, and that by reason of the fact that the said plaintiff had so abandoned its said agreement, and by reason of the further fact that the city was not bound to use said power for said purpose, and by further reason of the fact that the said city determined that it could pump its water with an oil engine much cheaper than by the use of the said power, the said city refused to use the said power for the said purpose and refused to construct the said transmission line; and that upon learning the position in the matter the said plaintiff company stated to the officials of the said city that it would not insist that the city would use the said power as offered by plaintiff for the purpose of pumping water and thereby lead the said officers, the councilmen of the said city to believe that the said plaintiff had abandoned all claim that the city was bound to purchase said power of said plaintiff.

14. That the defendants expressly deny all of the allegations of paragraph six of the plaintiff's said amended bill of complaint and states the fact to be that the said written proposal and the said ordinance No. 98 and the said contract for the pumping of said water were all of them, in the language of the said Edwin Perrigo and were drawn by him, or his attorneys, and presented to the city council and the electors of the city of Chariton, and that neither the said council or the said electors took any steps to know what per cent of profit the said plaintiff company would derive by reason of the said ordinance and contracts, and that the only thing they did consider and did see was the representations of the said Perrigo that he would furnish current and power at a certain rate, that being cheaper than the citizens were paying at that time.

88 15. That the defendants deny that the city of Chariton has control or owns any particular route from the corporation line to its pumping station, as is alleged in paragraph 8 of the said amended bill of complaint, and states that the said city would have access to the public highway as does the plaintiff. That if the city

has performed a breach of contract by not constructing a line and the plaintiff has paid out any sum of money for the construction of said line by reason of such alleged breach of contract, the plaintiff's remedy is in a court of law, and for money owed to the said plaintiff by the city of Charitoa, which money if it should be found that any were in fact owed, would have to be paid out of the funds of the said city raised by general taxation against all of the property in said city, and that to sustain the plaintiff's plea in this action would result in the individual users of the product of the said plaintiff paying said money so claimed to be due by increasing the price of the product which said users purchased of said plaintiff company, all of which would be inequitable, unjust, unlawful and unreasonable.

16. That the plaintiff's plea as set forth in the amended bill of complaint is inequitable and must be dismissed for the further reason that plaintiff in said amendment only claims that the city is liable for the sum of twenty five hundred dollars per annum by reason of said breach of contract and by this action plaintiff asks that it be permitted to raise rates to an extent which will produce an additional sum over and above the rates as fixed by the contract to the extent of nine or ten thousand dollars per annum; and defendants further states that said pumping contract does not control in any manner whatsoever the rate fixed in section three of said ordinance No. 98 for the product of said plaintiff used by the individual consumers and in no event can the plaintiff be permitted to collect from such consumers ten thousand dollars to make up an alleged
89 loss of twenty five hundred dollars by reason of a plain breach of contract on the part of said city.

17. That the defendants deny each and every allegation contained in the said amended bill of complaint not herein nor heretofore admitted but without waiving any rights whatsoever to deny any and all allegations now made or which may hereinafter be made in this action or in any other, in any way relating to a claimed breach of any contract for the pumping of any water or for furnishing power to pump the same, and expressly reserving to themselves and to the said city all rights to resist said claim, the said defendants consent that, if the Court shall so direct, evidence may be submitted in the form of affidavits to prove the amount which the said plaintiff would have received per annum from the city had the said city used power furnished by said company with which to pump the said water, the defendants expressly denying that the court has the jurisdiction in this action to hear and act upon such claim and issue.

18. That the defendants are not in possession of any knowledge or information sufficient to form a belief as to the amount of capital actually invested in the plaintiff's plant within the city of Chariton, nor the amount of bonds or other indebtedness outstanding interest charges on the same, or the plaintiff's current or other expenses, earnings or losses, and the defendants therefore deny each and every allegation contained in the plaintiff's bill of complaint and amendment thereto in respect to such capital, bonds, interest charges, expenses, losses, earnings and borrowed capital.

19. That if the plaintiff is in fact losing money in any amount whatsoever in the operation of its plant within the city of Chariton, such loss is sustained by reason of mismanagement upon the part of the plaintiff and not by reason of the rates as set out in said
90 section 3 of the said ordinance, and defendants expressly deny that said section 3 in any way tends to or does work or act as a confiscation of the plaintiff's property.

20. That the defendants admit that the plaintiff asked defendants to join with them in appearing before a so called Board of Conciliation for the purpose of an adjustment of rates, and defendants state that they refused to appear before said board by reason of the fact that said board was not authorized to act in any manner in respect to the rates to be charged the city of Chariton or its inhabitants, or to act in any manner whatsoever with reference to the contract existing between the said city and the plaintiff, and for the further reason that in order to successfully meet the plaintiff on the issue which it sought to raise before the said board, the defendant city would be required to spend thousands of dollars in preparation and that no one within the said city or no officers thereof were authorized, empowered or justified to make such a useless and wasteful expenditure.

The defendants admit that the plaintiff did appear before the said Board of Conciliation and procure an order changing and raising the rates as fixed in section 3 of said ordinance but defendants allege that said change was made merely upon statements and conclusions as made to the said Board of Conciliation by plaintiff and its counsel and not upon a full hearing upon the merits of the matter, and defendants allege that said proposed rates were unfair and unreasonable and were and are in no way binding upon the said city or its inhabitants and that they do not in any way modify or effect the contract existing between said city and the plaintiff

21. That the original bill of complaint and the amendment thereto fails to state a valid cause in an action of equity, are fictitious and fraudulent and should be dismissed.

Wherefore, the defendants pray that the temporary writ of
91 injunction heretofore issued by the Court shall be dissolved and set aside and that the defendants' prayer for a permanent injunction shall be denied and that all of the relief sought by the plaintiff shall be refused.

(Sgd.) CITY OF CHARITON, IOWA,
H. G. LARIMER, *Mayor.*
J. M. KNEELAND,
C. P. CONNELL,
R. J. YENGEL,
W. P. KULL,
Members of the City Council, Defendants
J. W. KRIDLEBAUGH,
Chariton, Iowa,
Attorney

92 To W. A. Eikenberry, E. A. Anderson, A. B. Gookin, G. W. Ensley, H. B. Blanchard, and Oscar J. Isreal, committee appointed by the city council of the city of Chariton, Iowa, to invite bids for the purchase of the electric light plant now owned by said city, and to the mayor and city council of said city of Chariton:

GENTLEMEN:

Having been advised that the city of Chariton desires to sell its electric light plant and is willing to grant to the purchaser a franchise for the conducting during a term of years of an electric lighting heating and power business I hereby make and submit the following proposals:

Appended hereto, and constituting a part of, is a form of an ordinance which, when passed and approved and ratified by the mayor and city council and electors of the city of Chariton, I will accept; and upon the passage, approval, ratification, and acceptance thereof I will pay in cash to the city of Chariton the sum of sixty-five thousand dollars for all the rights, privileges and benefits granted to me or to my assigns, in, by and under said ordinance, and for all the property now constituting the electric lighting, heating and power plant of the city of Chariton, and consisting of boilers and piping, engines, generators, exciters, switch boards and all other power house equipment and supplies, and also all poles, wires, cross arms, braces, transformers, conduits, conductors, meters, or other property and supplies belonging to the transmission system of said city, and also all other property of whatsoever description, including all records and contracts, excepting the real estate pertaining to said electric plant, the electrolier posts and office furniture. The city of Chariton to grant to me or assigns free from rent or cost the possession and use of the real estate and buildings now used by it in the production of electric lights heat and power for a period of eighteen months after I or assigns become possessed of the property hereinabove described. It is understood that all property hereinabove mentioned pertaining to said electric light plant, excepting real property, electrolier posts and office furniture which may be now owned or acquired up to the time I come into possession of the plant, shall pass to me and also all records and contracts, and that I shall become possessed of all the property free from all claims or incumbrances.

I further agree to purchase meters now owned by customers of about 220 in number at a fair cash value.

I will enter into the street lighting and pumping contract hereto appended.

The expense of a special election called for the purpose of submitting the franchise ordinance to the voters will be paid by me.

I herewith enclose and deposit a certified check in the sum of five thousand ($5,000.00) dollars as an evidence of my good faith, which, when this proposition is accepted, may be retained and shall apply upon the purchase price but which shall be immediately returned to me in the event this proposition is rejected.

This proposition in order to bind me shall be accepted by the mayor and city council of said city and the street lighting and pumping contract hereto appended entered into within ten days from the date hereof, and the ordinance hereto appended shall be duly passed, approved and ratified, all as provided by law, within sixty days from the date hereof.

Respectfully submitted,

EDWIN P. PERRIGO.

93 W. A. Eikenberry, A. B. Gookin, E. A. Anderson, G. W. Ensley, O. J. Israel, H. B. Blanchard, Citizens' Committee; J. M. Kneeland, F. B. Curtis, E. F. Gasser, Electric Light Committee of the City Council.

After reading the same the following resolution was offered and was read by the clerk:

Resolution.

Be it resolved, by the city council of the city of Chariton, Iowa, that the proposal submitted by Edwin Perrigo to purchase the electric light plant of the said city of Chariton, Iowa, for the consideration of sixty-five thousand dollars ($65,000.00) and signed by Edwin B. Perrigo, and accepted and signed by the committee composed of W. A. Eikenberry, A. B. Gookin, E. A. Anderson, G. W. Ensley, O. J. Israel, and H. B. Blanchard, citizens, and J. M. Kneeland, F. B. Curtis and E. F. Gasser, members of the electric light committee of the city council of the said city of Chariton, Iowa, be and the same is hereby accepted and approved with the terms and conditions therein contained, and further that this council approves the franchise ordinance agreed upon by said Edwin B. Perrigo and the members of said committee.

J. C. SEWARD,
Mayor.

G. J. GITTINGER,
City Clerk.

A motion was made by Gasser, seconded by Kestler, that the said resolution be passed and adopted. The mayor ordered the clerk to call the roll, which was done, councilmen present and voting as follows: Kneeland, yea; Curtis, yea; Gasser, yea; Kestler, yea; Boss, absent and not voting. There being four yeas and no nays, whereupon the mayor declared the motion carried and the resolution thereby passed and adopted.

The following resolution was offered and was read by the clerk:

Resolution.

Be it resolved, by the city council of the city of Chariton, Iowa, that the Mayor and the city clerk be, and they are hereby instructed and directed to sign and execute on behalf of the said city of Chari-

ton, Iowa, a conditional contract with Edwin B. Perrigo for lighting the streets and for power for pumping the water for the said city of Chariton, Iowa, submitted by and executed by said Edwin B. Perrigo, signed by

J. C. SEWARD,
Mayor.

G. J. GITTINGER,
City Clerk.

A motion was made by Curtis, seconded by Kneeland, that the resolution be passed and adopted. The mayor ordered the clerk to call the roll, which was done, councilmen present and voting as follows: Gasser, yea; Kestler, yea; Curtis, yea; Kneeland, yea; Boss absent and not voting. There being four yeas and no nays whereupon the mayór declared the motion carried, the resolution thereby passed and adopted.

The following is a true copy of the contract referred to in the above resolution:

94 EXHIBIT 1.

Agreement—Street Lighting—Electroliers—Chariton, Iowa.

Whereas, The City of Chariton, Iowa, may sell and dispose of to Edwin B. Perrigo, his heirs, and assigns, the Electric Light property now owned by said city and the said city desires to secure a contract to light its streets and for pumping water.

Witnesseth, That the said Edwin B. Perrigo, his heirs or assigns, hereinafter known as the party of the first part and the City of Chariton, Iowa, hereinafter known as party of the second part, contract and agree each with the other, as follows:

The party of the first part, upon acquiring the electric light property now owned by the party of the second part, will furnish to said party of the second part for the purpose of lighting its streets, alleys and public places, overhead suspended hooded incandescent street lamps as are now installed, at the following rates and prices:

For sixty candle power lamps or their equivalent each per annum, $15.00. For eighty candle power lamps or their equivalent each per annum, $18.00. Lamps to be lighted from dusk to dawn each night. Said lamps and equipment to be furnished and maintained by party of the first part.

In the event of any of said lights not burning during the time required by this contract, the city shall have the right to deduct the pro-rata amount from the bill for each night such light fails to be lighted for more than three consecutive nights, after receipt by first party of written notice from the proper city official that said light is not burning.

The party of the second part agrees not to order any lamp installed at a greater distance than three hundred and fifty feet from a then existing incandescent street lamp.

For five light cluster posts as are now installed, each having one top lamp of eighty candle power, to be lighted from dusk until dawn

each night, and four bottom lights each of approximately forty-five candle power to be lighted from dusk until 11:00 o'clock each night, or the equivalent of the above in candle power, each post for the sum of $36.00 per annum, or additional post installed in the future under the same conditions, that is; the post complete to be furnished by the city and installed only by the party of the first part in the same manner as those now placed at the same price; the party of the first part to furnish all lamps and globe renewals and to paint posts once each year and keep globes clean. The posts installed under this agreement are to be maintained by said second party. Payment to be made in twelve equal monthly installments.

Pumping Rates.

Party of the first part agrees to sell to the party of the second part electric current of approximately twenty-three hundred (2300) volts and service for pumping of city water at four cents per kilowatt hour as recorded, by a meter furnished by first party to second party at its pumping station; this rate also to include the operating of second party's pump motor or motors and pump or pumps. The party of the second part agrees to pay for all supplies and repairs and to pay the rate named for electric current and service.

95 The party of the first part agrees to furnish the material for and to construct, at actual cost of material and labor, a transmission line over the most practicable route from the water pumping station of said city located without the corporate limits of said city to the city limits as now existing, and at the city limits connect said transmission line to a transmission line constructed by the party of the first part at its own expense and running within the city from the city limits as now existing to the electric generating station of the first party.

The party of the first part shall, without cost to it, have the free use, in serving other customers, of the transmission line without the city limits, as now existing.

The city agrees to pay the cost of the transmission line without the city limits, as now existing, when same is completed.

All street lights provided for in this agreement shall be placed at such points within the city limits as are designated by the city council or its representative, providing that, should the city require the relocation of any such lights after — have been once located, then said city shall pay the actual cost of labor and material necessary to the relocation of such light or lights.

This contract shall take effect and be binding on and after date when the party of the first part shall have acquired the electric property now owned by the city of Chariton, and shall continue in full force during the term of the grant by said city to the party of the first part contained in Ordinance No. 98 of said city; provided, however, that on the 30th day of September, 1919, said City may terminate this contract by giving to the party of the first part thirty days' written notice prior thereto of its intention so to do; and in the event of the giving by said city of said notice the parties hereto shall there-

upon enter into a new contract with all provisions like those herein contained except as to rates and prices, which shall be just and reasonable; and during the continuance of said grant said city shall in five years' periods after the 30th day of September 1919, that is on the 30th day of September 1924, the 30th day of September 1929, and the 30th day of September 1934, have the right to terminate any existing contract upon giving to the party of the first part thirty days' written prior notice and entering into a new contract with provisions in all particulars like those in the existing contract except as to rates and prices, which shall be just and reasonable. Unless notice is given as herein provided any existing contract shall continue in full force and effect.

In testimony whereof the parties hereto have hereunto set their respective hands in the city of Chariton, State of Iowa, on this tenth day of August, A. D. 1914.

EDWIN B. PERRIGO,
J. C. SEWARD,
Mayor of the City of Chariton, Iowa.
G. J. GITTINGER,
Clerk of the City of Chariton, Iowa.

In the presence of
F. M. WAYNICK.

96

Southern Iowa Electric Company.

EXHIBIT "2."

Chariton, Iowa, November 15, 1918.

To Our Customers:

The Southern Iowa Electric Company now finds itself unable to continue longer the rates that have been in effect in the past. These rates were considered fair, reasonable and compensatory at the time they were established, but

Conditions Have Changed.

The world war has affected all of you. It has affected us more than most because it has increased our cost of producing electricity without any attendant advance in the selling price, or increase in income. Is there a "merchant, manufacturer or jobber in Chariton who has not advanced his selling price to meet his increased cost? The baker cannot remain in business and sell bread made from $2.00 wheat at the same price he sold bread made from $1.00 wheat. The grocer cannot now profitably sell 20 pounds of sugar for $1.00 neither can the butcher sell sirloin steak at 15 cents per pound, except at a loss. Would it be reasonable to expect them to do so?

Applied to the production of electricity the same conditions prevail. There is no mystery about the business of producing and distributing electricity. Three principle things enter into the cost of producing and distributing electricity.

Coal—Supplies—Labor.

Over half the cost of producing electricity is for coal.

Price per ton before the war	$1.40
Price now per ton	3.20
Increase	129%

We will use nearly 4000 tons this year to generate electricity used in Chariton.

Supplies have increased from 50 to 200 per cent since the war Labor has increased 25 to 40 per cent.

We are selling electricity at the same price as before the war and losing money. Some loss last year—many thousand dollars this year.

To continue solvent we must either limit service or increase rates. Poor service would retard the developement of Chariton and cause great inconvenience to the public.

We feel the best interests of all concerned would be better conserved by raising rates.

Therefore, we trust, in your sense of fairness and justice and believe that you will approve of the slight necessary increase in rates hereafter announced.

Beginning with November bills and until further notice, electric rates will be:

For Residence and commercial lighting—

For the first 50 kilowatt hours used per month 15 cts per kilowatt hour.

For the next 100 kilowatt hours used per month 14 cts per kilowatt hour.

For the next 150 kilowatt hours used per month 12 cts per kilowatt hour.

97 For all excess kilowatt hours used per month 11 cts per kilowatt hour.

Minimum $1.00 per month.

For Power—

For up to 100 kilowatt hours used per month 9¾ cts per kilowatt hour.

For 101 to 301 kilowatt hours used per month 8¾ cts per kilowatt hour.

For 301 to 500 kilowatt hours used per month 7¾ cts per kilowatt hour.

For 501 to 800 kilowatt hours used per month 6¾ cts per kilowatt hour.

Minimum $1.00 per month per H. P.

An additional one-half cent per kilowatt hour will be added to the bill, same to be rebated if bill is paid on or before the 10th of the month.

After applying these rates we still lose money, but we can keep our heads above water.

Sincerely,

SOUTHERN IOWA ELECTRIC COMPANY.

P. S.—On account of being delayed in advising you of this change in rates one-half the November bill will be charged at the old rate.

98 In the District Court of the United States for the Southern District of Iowa, Southern Division.

No. 4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Complainant,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. F. Connell, R. J. Yengel and W. F. Kull, as Members of the City Council of the City of Chariton, Iowa, Respondents.

Order Fixing Time for Hearing.

And now on June 14, 1919, it is ordered that June 25th, 1919 at ten o'clock A. M. at Iowa Cuty, Iowa, be and the same is hereby fixed as the time for making final record entries in the above cases under finding heretofore made. Also to determine whether injunctions shall stand pending appeal, and any other questions involved. Copies of this order will be sent by the clerk to counsel for all parties.

Witness my hand.

(Signed) MARTIN J. WADE,
Judge.

Endorsed: Filed June 14, 1919. Wm. C. McArthur, Clerk.

99 In the District Court of the United States, Southern District of Iowa, Southern Division.

No. 4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY

vs.

THE TOWN OF CHARITON et al.

Memorandum and Decree.

This and other cases have been under consideration for sometime, with a view, upon suggestion of the Court, that the question as to the

sufficiency of the defense pleaded and that even if the rates are confiscatory, the plaintiff is entitled to no relief because such rates were fixed by contract between the parties, could be determined without the delay and expense involved in taking testimony upon the question as to whether the rates were in fact confiscatory.

The Court has heretofore in Memorandum Opinion, expressed the view that where the rate for a public utility is fixed by contract between the city and the Utility Company, the same is binding, regardless of whether it is confiscatory, or whether it pays a fair profit upon the investment or not. The conclusion there expressed is still adhered to—the Court being satisfied that such a contract is binding, and that the rate having been fixed by agreement of the Utility Company, such company should be held to have waived any constitutional guarantee against deprivation of its property without compensation or due process of law.

The parties to these cases are now before the Court under order heretofore made, and upon answers in each of the cases, in which, in a separate count a contract rate is pleaded as a defense, and no issue is made in such separate count of the answer, upon the allegation of the plaintiff's petition that the rates are confiscatory.

100 Counsel for plaintiff and for defendants have already expressed their views that the court is without power to set the case for hearing upon this issue, and counsel for plaintiff have made a specific request that the case be set for hearing upon all the issues presented by the answer. I can conceive of no reason why the Court, satisfied that the facts pleaded in the first count of the Answer, constitute a good defense, and that under such facts the complainant is not entitled to recover, should take the time, or permit the delay and expense incident to a full hearing of the case.

Present equity rules contemplate that cases shall be heard as speedily as possible, and rule 29, in my judgment, permits the Court to set for hearing this separate issue which goes to the entire cause of action alleged in plaintiff's petition.

Doubt has been expressed as to whether—in case the Court should hold the defense to be sufficient and this holding should be reversed upon appeal, the parties would be entitled to a trial upon the other issues presented by the answer. It is my understanding that in case the Court should hold the defense sufficient, and the same should be reversed, that the Court of Appeals will remand it to this Court for further proceedings, which will leave the case open to be fully heard upon any issue then presented.

In view of these considerations, the Court enters the following Decree:

(Endorsed:) Filed July 3rd, 1919. Wm. C. McArthur, Clerk, by John C. Hunt, Deputy.

101 In the District Court of the United States, Southern District of Iowa, Southern Division

#4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY

vs.

THE TOWN OF CHARITON, IOWA et al.

Decree.

And now on this 25th day of June, 1919, in the above entitled case, the parties appearing by counsel, and the pleadings herein being presented and duly considered, it is ordered and adjudged, that this case be set down for hearing upon Count One of the Answer—the issue presented by said Count of said Answer to be first tried and determined before proceeding with any of the other defenses herein.

To this order setting the case for trial upon said separate issue, the plaintiff and defendants except. The plaintiff requests the Court to try the entire case—to appoint a Master and proceed to the termination of all of the issues in the case. This request is denied, and the plaintiff excepts.

And now on this 25th day of June, 1919, this case coming on for hearing upon the issue raised by the First Count of the Answer under the foregoing order, the Court proceeds to the trial thereof, and the evidence being introduced upon such issue, and the Court being now fully advised finds;

That the rates complained of by the plaintiff, were in fact, fixed by contract of the parties, as alleged in said Count of said answer, and that said rates are valid and binding upon the plaintiff, regardless of the claim in the plaintiff's petition that the same
102 are confiscatory, and that in view of such contract rates, the facts stated in the Bill of Complaint and amendments thereto, entitle the plaintiff to no relief; such rates being fixed by a contract binding upon the plaintiff, and that for this reason the plaintiff is not entitled to any relief herein, and its Bill of Complaint is dismissed. The plaintiff excepts.

The plaintiff makes oral request that the temporary injunction hereinbefore granted, be continued, or that additional order of injunction be issued, to be effective pending the appeal in this case, and is given leave to file written application in support of such request, and the temporary injunction and bond are continued until further orders herein. The Court reserving jurisdiction and power to make such further orders, and reserving full power upon final hearing, to make such orders as may be necessary to carry out any order of distribution of funds if the same becomes necessary under ruling of the Appel-ate Court.

(Sgd.) MARTIN J. WADE,
Judge.

Endorsed: Filed July 3rd, A. D. 1919. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

103 And thereafter to-wit: On the 15th day of August A. D. 1919 there was filed in said cause Application for Continuance of Restraining order which is in words and figures as follows to-wit:

104 In the District Court of the United States, Southern District of Iowa, Southern Division.

No. 4010. In Equity.

Filed Aug. 15, 1919. William C. McArthur, Clerk.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor, and J. M Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Application for Order of Court for a Continuance of the Restraining Order Heretofore Issued Pending Appeal.

To the Honorable Martin J. Wade, Judge:

Your petitioner, Southern Iowa Electric Company respectfully shows the court that in the above entitled cause on the 14th day of November, 1918, upon the application of the plaintiff an order of court was entered that the defendants above named and each of them and all persons who shall have notice of said order of court, be enjoined and restrained from in any manner enforcing by civil or criminal proceedings, any of the conditions or penalties of any ordinance of the city of Chariton, purporting to fix rates to be charged by plaintiff to consumers in the city of Chariton. Said order of court was conditioned however, that the plaintiff file a bond in the penal sum of $15,000.00 assuring that the plaintiff shall repay to the users of electricity any sum or amount collected during the continuance of the injunction, over and above the amount finally determined to be reasonable and legal.

105 That the said order of court was further conditioned that plaintiff should keep an accurate account and a permanent record of the amounts paid by each person using electricity, and that the plaintiff should not charge in excess of the rates specified in said order of court.

Your petitioner further shows the court that pursuant to said order and in compliance therewith, the plaintiff furnished a bond with sureties approved by the clerk and in the penal sum of $15,000.00 and conforming to the requirements of the said order of

court and which said bond was approved on the 17th day of November, 1919.

Your petitioner further shows the court that since the entry of the order of court hereinbefore referred to and the issuance of the injunction, the plaintiff has collected from consumers of electric current in the town of Chariton, up to July 1, 1919, the sum of $32,761.20. That of the sum of money so collected the sum of $4,520.75 represents the amount collected in excess of the amount which would have accrued under the rates of the ordinance of the city of Chariton, in force during said period of time.

Your petitioner further shows the court that final decree was entered in this cause on the 25th day of June, 1919, and therefrom defendant is prosecuting an appeal to the Supreme Court of the United States. The plaintiff presents concurrently herewith its petition for appeal and assignment of errors. That it is the desire of the plaintiff to have continued the injunction heretofore granted in this cause and that the same shall not be dissolved pending the appeal and respectfully shows the court that in prosecuting this appeal the plaintiff is doing so in good faith, believing that error exists in said decree.

106 Plaintiff further shows the court that should its plea on appeal be sustained, it will suffer great and irreparable injury and loss in that the amounts that will then become due from a large number of people residing in the city of Chariton, will be so small from each that the expense of collection will exceed the amount involved.

Plaintiff tendered the giving of such security as the court may exact and the compliance with such conditions as the court in its discretion may determine to be just, equitable and proper.

Therefore, your petitioner asks that at the time of the entering the order allowing the appeal, the court shall make an order restoring and retaining the injunction heretofore ordered during the pendency of the appeal upon such terms as to bond or otherwise as the court may consider proper for security of the rights of the defendants.

EMMET TINLEY,
WILLIAM E. MITCHELL,
Attorneys for Plaintiff.

STATE OF IOWA,
Pottawattamie County, ss:

I, W. B. Roberts being first duly sworn upon oath say that I am Secty. & Treas. of the Southern Iowa Electric Company; that I am acquainted with the contents of the foregoing application and the statements contained therein are true as I verily believe. That in said application is set forth a correct statement of the moneys received from consumers of electric current in the city of Chariton from the time the temporary writ of injunction was ordered in said cause, up to the 1st day of July, 1919, and that said application correctly states the amount collected from the consumers of

107 electricity in the city of Chariton, in excess of the rates established by ordinance of said city in force during said period of time.

W. B. ROBERTS.

Subscribed in my presence and sworn to before me this 15 day of July, 1919.

JOHN P. ENGELKE,
Notary Public.

108 And thereafter to-wit: On the 15th day of August, A. D. 1919, there was filed in said cause Petition for Appeal which is in words and figures as follows to-wit:

109 In the District Court of the United States, Southern District of Iowa, Southern Division.

\# 4010. In Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Petition for Appeal.

Filed Aug. 15, 1919. Wm. C. McArthur, Clerk.

To the Honorable Martin J. Wade, District Judge:

The above named plaintiff The Southern Iowa Electric Company, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 25th day of June, A. D. 1919, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, stipulations, orders, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of
110 the United States sitting at Washington, D. C., under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper orders relating to the required security to be required of it, be made.

SOUTHERN IOWA ELECTRIC CO.,
By W. B. ROBERTS,
Sec'y & Treas., Petitioner for Appeal.

ISAAC E. CONGDON,
Of Omaha, Nebr.;
EMMET TINLEY,
Of Council Bluffs, Ia.;
W. E. MITCHELL,
Council Bluffs, Ia.,
Att'ys for Plaintiff.

111 And thereafter to-wit: On the same day August 15th, 1919, there was filed in said cause Assignment of Errors which is in words and figures as follows to-wit:

112 In the District Court of the United States, Southern District of Iowa, Southern Division.

In Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. E. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Assignment of Errors.

Filed Aug. 15, 1919. WM. C. MCARTHUR, Clerk, by John C. Hunt, Deputy.

Comes now the plaintiff in the above entitled cause, The Southern Iowa Electric Company, and files the following assignment of errors upon which it will rely in the prosecution of the appeal in the above entitled cause from the decree made by this honorable court on the 25th day of June, 1919.

I.

That the United States District Court for the Southern District of Iowa, erred in ordering and decreeing that the issue presented by Count 1 of the defendants' amended and substitued answer, be first tried and determined before proceeding with any of the defenses.

2.

That the United States District Court for the Southern District of Iowa, erred in overruling the request of plaintiff to proceed to the trial of the entire cause and to appoint a Master to take
113 the testimony upon all of the issues tendered by the petitioner for the determination of the court.

3.

That the United States District Court for the Southern District of Iowa erred in refusing to permit the introduction of evidence in this cause upon issues presented in plaintiff's bill and both counts of defendant's amended and substituted answer, thereby making it impossible to present the record of a full and complete trial upon all

of the issues tendered by the pleadings for the consideration of the court upon this appeal.

4.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the rates specified in the ordinance adopted by the city of Chariton as the rates to be charged by plaintiff to consumers of electric current, constitute a valid and binding contract regardless of the claim of the plaintiff and appellant that such specified rates are confiscatory.

5.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the maximum rates prescribed in the ordinance granting to the plaintiff the right to maintain and operate a system of lighting and to distribute electric current to consumers in the city of Chariton constituted a valid contract, binding plaintiff to charge rates not exceeding the rates therein prescribed for electric current furnished to consumers, for that the rates thus established by said ordinance constituted and was the exercise of a legislative power by the
114 City of Chariton, under the provisions of Section 725 of the Code of 1897 as amended.

6.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the rates to be charged consumers for the furnishing of electric current by the defendant prescribed by ordinance authorizing plaintiff to maintain and operate an electric lighting system in the city of Chariton and to distribute current to consumers, constituted a contract binding upon plaintiff, because the city of Chariton did not possess the power to fix rates to be charged for the furnishing of electric current to consumers by contract but possessed only the power of regulating and fixing such rates in the exercise of its legislative powers.

7.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the rates to be charged consumers of electric current prescribed in the ordinance adopted by the city of Chariton granting authority to the plaintiff to maintain and operate an electric lighting system in the city of Chariton and to distribute current to consumers did not constitute the exercise of the legislative power of said city granted by the statutes of the state of Iowa and particularly by Section 725 of the Code of 1897 and amendments thereto.

8.

The United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the rates prescribed by the ordinance adopted by the city of Chariton limiting the charges to be made to consumers for electric current were
115 binding upon the plaintiff as a contract, even though such rates were not compensatory, for that the city of Chariton possessed only the power of regulation and control of rates as granted by Section 725 of the Code of 1897 and amendments thereto, and that such power was a continuing power.

9.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the powers granted to cities in Iowa by the provisions of Section 725 of the Code of 1897 and amendments thereto were not legislative powers obligating the exercise thereof to the end that the rates permitted to be charged by the plaintiff to consumers should be compensatory for that the power granted by said section of the statute is a continuing power of legislation and the failure to exercise the same by increasing the rates permitted to be charged when the existing rates become non-compensatory amounts to the taking of property without compensation in violation of the Constitution.

10.

The United States District Court for the Southern District of Iowa erred in declining to hold, conclude and decree that the rates prescribed by the ordinance adopted by the city of Chariton and conceded by count 1 of its answer to be non-compensatory were subject to attack under the provisions of the Constitution of the United States, because the prescribing of such rates was an exercise of a legislative power by the city of Chariton.

11.

That the United States District Court for the Southern District of Iowa erred in holding, concluding and decreeing that the
116 facts stated in the Bill of Complaint and amendment thereto, entitled the plaintiff and appellant to no relief whatever.

EMMET TINLEY,
W. E. MITCHELL,
J. C. PRYOR, Jr.,
D. L. ROSS,
Attorneys for Appellant.

117 And thereafter to wit: On the 18th day of August, A. D. 1919 there was filed in said cause order allowing appeal which is in words and figures as follows to wit:

118 In the District Court of the United States, Southern District of Iowa, Southern Division.

In Equity.

4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. E. Kull and O. E. Lamb, as members of the City Council of the City of Chariton, Iowa, Defendants.

Order Allowing Appeal.

Filed Aug. 18, 1918.

Wm. C. McArthur, Clerk.

Upon motion of Emmet Tinley, solicitor and counsel for plaintiff, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein be and the same is hereby allowed and that a certified transcript of the record, stipulation, orders, proceedings and documents be forthwith submitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of $500.00.

Dated Aug. 18, 1919.

MARTIN J. WADE,
Judge.

Entered Equity Journal #2, page 46.

119 And thereafter to-wit: On the 15th day of August A. D. 1919 there was filed in said cause an Order continuing restraining order which is in words and figures as follows to-wit:

120 In the District Court of the United States for the Southern District of Iowa, Southern Division.

Filed Aug 15, 1919.

Wm. C. McArthur, Clerk.

No. 4010. Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA et al., Defendants.

Order.

And now on this 15th day of August, 1919, the application by the plaintiff for an order of supersedeas, fixing bond and continuing injunction pending appeal having been filed and presented and submitted; and the court being now fully advised, finds that such application should be and the same is now granted, and the order restraining the defendants, heretofore entered and still in force herein shall be, and the same is continued in full force herein pending appeal, upon the following conditions.

(1) That plaintiff shall file a new bond herein, conditioned as in the original bond herein, all of such conditions to apply to the period while this case is pending upon appeal and until the case is finally disposed of, such bond to be in the sum of fifteen thousand ($15,000.00) dollars and shall be approved by the Clerk of this Court. This condition may be complied with by filing the written consent of the surety upon present bond, that such bond shall continue in full force and effect subject to all liability under this order.

(2) This Court and the Court to which appeal is taken shall have full power to order additional bond and to make any other order with reference thereto.

121 (3) The plaintiff shall prosecute appeal with diligence and this court or the court to which appeal is taken may revoke this order in case of unwarranted delay.

(4) Plaintiff shall have fifteen days in which to comply with order as to filing bond as prescribed herein.

To this order the defendants except.

(Signed) MARTIN J. WADE,
Judge.

Entered Equity Journal #2, page 45.

122 And thereafter to-wit: On the 27th day of August A. D. 1919 there was filed in said cause Bond for continuance of restraining order which is in words and figures as follows to-wit:

123 SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, and H. G. LARIMER, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, and W. F. Kull, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Bond.

Whereas, by order of Court entered in the above entitled cause on the 14th day of November, 1918, the defendants, to-wit, the City of Chariton and H. G. Larimer, as Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel and W. F. Kull, as members of the city Council of the city of Chariton, Iowa, their successors in office and all other persons who shall have notice of said order be enjoined and restrained from in any manner enforcing, by civil or criminal proceedings any of the conditions or penalties of any ordinance of the city of Chariton establishing or purporting to establish rates to be charged by the plaintiff for the furnishing of electric current in the city of Chariton less than the following rates, to-wit:

For residence and commercial lighting and power for the first 50 K. W. H. used per month 15¢;

For the next 100 K. W. H. used per month 14¢;

For the next 150 K. W. H. duse per month 12¢;

124 All excess 11¢.

Minimum charge of 75¢ per month per meter. An additional charge of one half cent per K. W. H. may be entered on bill and same is to be rebated if bill is paid on or before the tenth of the month.

For electric current furnished for power up to 100 K. W. H. 9-3/4¢ per K. W. H.

101 to 300 K. W. H. 8 3/4¢;

301 to 500 K. W. H. 7 3/4¢;

501 to 800 K. W. H. 6 3/4¢;

801 to 1,000 K. W. H. Special contract. Minimum charge of 75¢ per month per meter, and,

Whereas, the plaintiff, by the terms of said order was permitted to charge and receive for electric current furnished in the city of Chariton in accordance with the above rates and has since then charged and received compensation for the furnishing of electric current in accordance with said rates, and,

Whereas, said order of Court is conditioned upon the plaintiff filing a bond in the sum of fifteen thousand ($15,000.00) dollars conditioned as required by said order, which said bond was filed, J. P. Greenshields and A. D. Annis as sureties, and,

Whereas, by decree of this Court entered on the 25th day of June, 1919, plaintiff's petition was dismissed and upon the request of plaintiff the restraining order heretofore referred to was continued upon request of plaintiff that it be permitted to file written application for

the continuance of said restraining order pending appeal to the Supreme Court of the United States, and,

Whereas, the plaintiff filed in this Court its written application for the continuance of the restraining order pending its appeal and on the 15th day of August, 1919, an order of Court was entered that the restraining order shall continue in full force pending the appeal upon the following conditions:

First. That plaintiff shall file a new bond herein, conditioned as is the original bond herein, all of such conditions to apply to the period while this case is pending upon appeal and until the case is finally disposed of, such bond to be in the sum of fifteen thousand ($15,000.00) dollars and shall be approved by the Clerk of this Court. This condition may be complied with by filing the
125 written consent of the surety upon present bond, that such bond shall continue in full force and effect subject to all liability under this order.

Second. This Court and the Court to which appeal is taken shall have full power to order additional bond and to make any other order with reference thereto.

Third. The plaintiff shall prosecute appeal with diligence and this court or the court to which appeal is taken may revoke this order in case of unwarranted delay.

Fourth. Plaintiff shall have fifteen days in which to comply with the order as to filing bond as prescribed herein.

Therefore, we, J. P. Greenshields, and A. D. Annis, sureties upon the bond for fifteen thousand ($15,000.00) dollars of the Southern Iowa Electric Company filed in this cause, pursuant to the provisions of the order of Court hereinbefore referred to, dated November 14, 1918, for the purpose of continuing said bond in force pending the appeal of plaintiff and in conformity with the order of court entered herein on the 15th day of August 1919 do hereby consent that said bond shall continue in full force and effect and subject to all liability under the order of Court of August 15, 1919.

In Testimony Whereof we have affixed our signatures and seals to the foregoing instrument this 23rd day of August, 1919.

J. P. GREENSHIELDS. [SEAL.]
A. D. ANNIS. [SEAL.]

126 STATE OF IOWA,
Pottawattamie County, ss:

We, J. P. Greenshields and A. D. Annis, being first duly sworn upon oath, each for himself says that he is a resident of Council Bluffs, Pottawattamie County, Iowa, and that he signed the foregoing instrument; that he also signed as surety the bond therein referred to and each for himself further says that he is worth in excess of the sum of thirty thousand ($30,000.00) dollars beyond the amount of his debts and that he has property in the Southern

District of Iowa of a value exceeding thirty thousand ($30,000.00) dollars beyond the amount of his debts and subject to execution.

A. D. ANNIS.
J. P. GREENSHIELDS.

Subscribed in my presence and sworn to before me by J. P. Greenshields and A. D. Annis this 23rd day of August, 1919.

JOHN P. ENGELKE,
Notary Public.

[NOTARIAL SEAL.]

Filed August 27, 1919. Wm. C. McArthur, Clerk. By Louis J. Adelman, Deputy.

127 And thereafter to-wit: On the 2nd day of September A. D. 1919 there was filed in said cause an Appeal bond which is in words and figures as follows to-wit:

128

In Equity.

SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA, H. G. LARIMER, Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as Members of the City Council of the City of Chariton, Iowa, Defendants.

Bond on Appeal.

Know All Men by these Presents:

That we, Southern Iowa Electric Company as Principal and Wm. Arnd and H. L. Tinley as sureties of the County of Pottawattamie and State of Iowa, are held and firmly bound unto The City of Chariton, Iowa, H. G. Larimer, Mayor, and J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as members of the City Council of the City of Chariton, Iowa, in the penal sum of $500.00 lawful money of the United States to be paid to them and their respective executors, administrators and successors, to which payment well and truly to be made we bind ourselves and each of us jointly and severally and each of our heirs executors and administrators by these presents, and whereas the above

129 named plaintiff Southern Iowa Electric Company has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the District Court of the United States for the Southern District of Iowa, in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named Southern Iowa Electric Company shall prosecute its appeal to effect and answer all costs if it fail to make good its

plea, then this obligation shall be void, otherwise to remain in full force and effect.

Sealed with our seals and dated this 25th day of August, 1919.

SOUTHERN IOWA
ELECTRIC COMPANY,
By W. B. ROBERTS,
Sec'y & Treas., Principal. [SEAL.]

WM. ARND, [SEAL.]
H. L. TINLEY, [SEAL.]
Sureties.

STATE OF IOWA,
County of Pottawattamie, ss:

We, Wm. Arnd and H. L. Tinley each being first duly sworn upon oath say that we are the sureties who executed the foregoing instrument and that in the execution thereof we did so voluntarily and for the purposes set forth therein. We further say that we are residents and freeholders of the county of Pottawattamie and state of Iowa, and that we are worth in excess of the sum of $1,000.00 over and above our just debts and legal liabilities and property exempt from execution.

WM. ARND.
H. L. TINLEY.

Subscribed in my presence and sworn to before me by Wm. Arnd and H. L. Tinley this 25th day of August, 1919, and each acknowledged the execution of the foregoing instrument to be his free act and deed for the purposes therein set forth.

130

[SEAL.]

JOHN P. ENGELKE,
Notary Public.

The above bond is approved both as to sufficiency and form this 30th day of August, 1919.

(Sgd.)

MARTIN J. WADE,
Judge.

Endorsed: Filed Sept. 2, 1919. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy, 1919.

131 And thereafter to-wit: On the 15th day of September A. D. 1919 there was filed in said cause præcipe for transcript of the record which is in words and figures as follows to-wit:

132 SOUTHERN IOWA ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF CHARITON, IOWA; H. G. LARIMER, Mayor and J. M. Kneeland, C. P. Connell, R. J. Yengel, W. F. Kull and O. E. Lamb, as members of the City Council of the City of Chariton, Iowa, Defendants.

Praecipe for Transcript.

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause to be entered and filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said court and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1st. Bill of complaint filed November 5, 1918.

2nd. Order of Court fixing time for hearing filed November 5, 1918.

3d. Memorandum entered and filed November 5, 1918.

4th. Order for injuction entered and filed November 14, 1918.

5th. Bond for temporary injunction and approval filed November 18, 1918.

6th. Answer of respondents, filed November 26, 1918.

7th. Order of court allowing the filing of Amendment to bill of complaint filed December 28, 1918.

133 8th. Amendment to bill of complaint filed December 28, 1918.

9th. Amendment to Answer filed January 13, 1919.

10th. Memorandum opinion of the Court entered and filed March 24, 1919.

11th. Order of Court Granting leave to respondent to file Amended and Substituted Answer, entered and filed April 28, 1919.

12th. Amended and Substituted Answer filed by respondent.

13. Order of Court fixing time and place for hearing filed and entered June 14, 1919.

14th. Memorandum opinion of Court and Decree entered and filed July 3, 1919.

15th. Application of complainant to continue restraining order, filed August 15, 1919.

15th. Petition for Appeal filed August 15, 1919.

17th. Assignment of errors, filed Aug. 15, 1919 (re-draft).

18th. Order of Court allowing appeal, entered and filed August 15, 1919.

19th. Order of Court continuing restraining order and allowing the filing of bond.

20th. Bond containing restraining order and approval.

21st. Bond on appeal and approval.

22nd. Citation on appeal and proof of service.

23d. Praecipe for transcript and proof of service.

24th. All opinions and orders of the court at any time entered in this cause and not listed above.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States and to be entered and filed in the office of the Clerk of the Supreme Court of the United States, at Washington, District of Columbia, within thirty days from September 3, 1919.

ISAAC E. CONGDON,
EMMET TINLEY,
WILLIAM E. MITCHELL,
JOHN C. PRYOR, JR.,
DILLON L. ROSS,
Solicitors for Appellant.

134 STATE OF IOWA,
Lucas County, ss:

I, C. C. Lyman, being first duly sworn upon oath say that I am the duly elected, qualified and acting sheriff of Lucas County, Iowa; that the within and attached Praecipe for transcript came into my hands on the 11th day of September, 1919, and I duly served the same by offering to read the same to each of the defendants hereinafter named and each waiving the reading, and delivering to each a true copy thereof, as follows, to-wit: The City of Chariton, Iowa, by service upon W. M. Householder, city clerk of said City; H. G. Larimer, named as Mayor, also Geo. Routt, Mayor succeeding H. G. Larimer, also J. M. Kneeland, J. P. Connell, R. J. Yengel, W. F. Kull, named as members of the City Council of the City of Chariton, and upon Frank Dunshee, Fred Yengel, Alf Timmons. O. E. Lamb, having removed his residence from the State of Iowa, residence unknown, members of the City Council of the City of Chariton, Iowa, succeeding C. P. Connell, R. J. Yengel, J. M. Kneeland, as such members; that the service of such Praecipe for transcript was so made by me upon each of the above named defendants on the 11th and 13th days

of September, 1919; that Joseph W. Kridlebaugh, Counsel for defendants and City Attorney for the city of Chariton is absent from the State.

C. C. LYMAN.

Subscribed in my presence and sworn to before me by the said C. C. Lyman, this 13th day of September, 1919.

GEO. A. VERNER,
Clerk Dist. Court.

Endorsed: Filed Sept. 15, 1919. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

135 UNITED STATES OF AMERICA,
Southern District of Iowa, ss:

I, Wm. C. McArthur, Clerk of the District Court of the United States for the Southern District of Iowa hereby certify the foregoing 134 pages to contain a full, true and complete transcript of the record of the case of Southern Iowa Electric Company, Complainant, vs. The City of Chariton, Iowa, et al., Defendants No. 4010—Equity Southern Division, as called for by the praecipe for transcript *fo* the record filed in said cause September 15th, 1919 as full, true and complete as the originals thereof now on file and of record in office in the City of Creston in said District.

I further certify that I transmit herewith as part of said transcript the original citation with service thereof on defendants.

In witness whereof, I hereunto set my hand and affix the seal of said Court at office in the City of Creston in said District this 23d day of September A. D. 1919.

[Seal District Court District of Iowa.]

W. C. McARTHUR,
Clerk of Said Court.

Endorsed on cover: File No. 27,310. S. Iowa. D. C. U. S. Term No. 555. Southern Iowa Electric Company, Appellant, vs. The City of Chariton, Iowa, et al. Filed October 2d, 1919. File No. 27,310.